TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~[illegible]~~ 47

THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, APPELLANT,

vs.

THE UNITED STATES, THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY, ELIAS F. DRAKE, AND AMHERST H. WILDER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

FILED SEPTEMBER 17, 1894.

(14,844.)

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INDEX.

	Original.	Print.
Caption	1	1
Petition of the Chicago, Milwaukee and St. Paul R'y Co.	1	1
Order granting leave to C., M. & St. P. R'y Co. to intervene, &c.	5	5
Cross-bill of the C., M. & St. P. R'y Co.	6	5
Subpœna and return	11	11
Subpœna and return	13	12
Petition of Ben. Olson *et al.* for leave to intervene	14	13
Order granting leave to Ben. Olson *et al.* to intervene	16	15
Cross-bill of Ben. Olson *et al.*	17	16
Schedule 2—List	20	19
3—List	21	20
1—List	21	20
4—List	22	21
Answer of C., M. & St. P. R'y Co. to cross-bill of Olson *et al.*	23	22
Amended cross-bill of C., M. & St. P. R'y Co.	24	23
Exhibit—Map	32	32
Amendment to bill of complaint of United States	33	32
Reply of United States to answer of C., M. & St. P. R'y Co.	35	34

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 4, 1894.

	Original.	Print.
Answer of United States to amended cross-bill of C., M. & St. P. R'y Co.	36	34
Exhibit A—Act to resume all the lands and rights conferred upon the McGregor Western R. R. Co. by or under act of Congress approved May 12, 1864	43	43
B—Act making grant of lands to McGregor and Sioux City R'y Co., &c., March 31, 1868	44	44
C—Act in relation to the lands granted State of Iowa, February 27, 1878	47	47
D—Decree in case of C., M. & St. P. R'y Co. *vs.* Sioux City & St. P. R. R. Co. *et al.*, No. 1481, equity	50	50
E—Commissioners' report of partition and order of confirmation in case of C., M. & St. P. R'y Co. *vs.* Sioux City & St. P. R. R. Co. *et al.*, No. 1481, equity	64	67
Agreed statement of facts	71	77
Letter of Secretary Lamar to Commissioner of General Land Office, July 26, 1887	77	83
Letter of Commissioner to Secretary of Interior, May 19, 1890	84	91
Reply of Olson *et al.* to answer of C., M. & St. P. R'y Co.	86	93
Opinion of Judge Shiras	88	94
Order directing manner of serving subpœnas	93	99
Order amending pleadings and beginning trial	94	99
Order taking cause under advisement	94	99
Decree	95	100
Order allowing appeal	98	103
Petition for appeal	99	103
Assignment of errors (copy)	99	104
Assignment of errors (original)	100	106
Citation and acceptance of service by district attorney	103	107
Acceptance of service by acting Attorney General	104	108
Bond on appeal	105	108
Clerk's certificate	106	109

1 UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, }

Pleas before the circuit court *for* the United States in and for the northern district of Iowa, western division, at a term begun and holden at Sioux City, in said district, on the — day of May, A. D. 1891, before the Hon. Oliver P. Shiras, judge of said court.

UNITED STATES OF AMERICA, Complainant,
vs.
SIOUX CITY & ST. PAUL RAILROAD, ELIAS F. Drake, Amherst H. Wilder, & The C., M. & St. P. Railway Company, Defendants. } No. 104. Equity.

Be it remembered that heretofore, to wit, on the 4th day of December, A. D. 1890, the defendant Chicago, Milwaukee & St. Paul Railway Company filed in the office of the clerk of the United States circuit court in and for the northern district of Iowa a petition praying an order allowing said Chicago, Milwaukee & St. Paul Railway Company to intervene in the cause of United States of America *vs.* Sioux City & St. Paul Railroad Company, Elias F. Drake, & Amherst H. Wilder; which petition is in the words and figures following, to wit: .

Circuit Court of the United States for the Northern District of Iowa, Western Division.

UNITED STATES OF AMERICA, Plaintiff,
vs.
SIOUX CITY & ST. PAUL R. R. Co. and Others, Defendants. } In Equity.

Petition of the Chicago, Milwaukee & St. Paul Railway Co.

To the judges of said court:

Your petitioner, The Chicago, Milwaukee & St. Paul Railway Company; respectfully shows unto this honorable court—

That it is a corporation duly formed and organized under and by virtue of the laws of the State of Wisconsin, and is a citizen of that State.

That by an act of Congress entitled "An act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," approved May 12, 1864, a grant of land was made to the State of Iowa for the benefit of the McGregor Western Railway Company for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main street, South McGregor, in said State, in a westerly direction, by the most practicable route on or near the forty-third parallel of
2 north latitude, until it should intersect a road running from Sioux City to the Minnesota State line, in the county of O'Brien, in said State of Iowa, and in and by said act every alternate section of land, designated by odd numbers, for ten sections in

width on each side of said road was granted to said State; and it was further therein provided that in case it should appear that the United States had, when the lines or routes of said roads were definitely located, sold any section, or any part thereof, granted as aforesaid, or that the right of pre-emption or homestead settlement had attached to the same, or the same had been reserved by the United States for any purpose whatever, then it should be the duty of the Secretary of the Interior to cause to be selected for the purpose aforesaid, from the public lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections designated by odd numbers as should be equal to such lands as the United States had reserved or sold, or otherwise appropriated, or to which the right of homestead settlement or pre-emption had attached as aforesaid, which lands thus indicated by odd-numbered sections, by the direction of the Secretary of the Interior, should be held by the State of Iowa for the uses and purposes aforesaid:

Provided, that the lands so selected should in no case be located more than twenty miles from the lines of said road.

And further provided, that any and all lands heretofore reserved to the United States by any act of Congress or by any other manner, by competent authority, for the purpose of aiding in any object of internal improvement or any purpose whatever should be, and the same were thereby, reserved and excepted from the operation of said act.

That by an act of the legislature of the State of Iowa approved April 20th, 1866, said grant was accepted, and the said McGregor Western Railroad Company, a corporation then existing under and by virtue of the laws of the State of Iowa, constructed said road from the foot of Main street, in South McGregor, to Calmar, a distance of about forty-three miles, prior to the first day of January, 1868.

That by an act of the legislature approved February 29th, 1868, the said State of Iowa resumed to itself from said McGregor Western Railroad Company said land grant and all the rights conferred thereby upon the said company, and afterwards the legislature of the State of Iowa, by an act making a grant of land to the McGregor & Sioux City Railway Company or, in case of their failure to accept the same, to the Forty-third Paral-el*le* Company, and to execute the trust conferred by act of Congress entitled "An act for a grant of land to the State of Iowa in alternate sections to aid in the construction of a railroad in said State, approved May 12, 1864," granted to the McGregor & Sioux City Railroad Company all the lands, rights, and privileges that were granted to the said State of Iowa by the said act of Congress approved May 12, 1864, for the purpose of aiding in the construction of said railroad.

That the said McGregor & Sioux City Railway Company afterwards and prior to 1871 constructed said railroad from Calmar aforesaid to Algona, in said State of Iowa, in all respects as required by said act of Congress, and that the said McGregor & Sioux City Railway Company having failed to construct said road to the

3 junction in O'Brien county, as provided by said act entitled "An act in relation to the lands granted to the State of Iowa by the act of Congress entitled 'An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State, approved May 12, 1864,' and to grant to and impose upon the Chicago, Milwaukee & St. Paul Railway Company the powers and liabilities mentioned in chapter four, title ten, of the Code," approved February 27, 1878, resumed to said State all lands or rights to lands theretofore granted to the McGregor & Sioux City Railway Company, and in and by said act conferred all the lands and rights to lands, whether in severalty, jointly, or in common, and including all lands or rights to lands or any interest therein or claims thereto, whether certified to or not, whether embraced in the overlapping or conflicting limits of the two grants or roads made and described by the act of Congress thereinbefore designated, granted to the State of Iowa to aid in the construction of a railroad from a point at or near the foot of Main street, South McGregor, in said State, in a westerly direction by the most practicable route on or near the forty-third parallel of north latitude until it should intersect in the county of O'Brien the railroad running from Sioux City, Iowa, to the Minnesota State line, as provided in said act of Congress, upon the Chicago, Milwaukee & St. Paul Railway Company, which company then owned and operated the said railroad from McGregor to Algona, and granted to and conferred upon said company all of said lands and the rights thereto.

That afterwards and during the year 1878 the said Chicago, Milwaukee & St. Paul Railway Company completed said railroad from Algona to said junction in O'Brien county, and thereby the entire road from South McGregor was completed, as provided by and in accordance with the said act of Congress so as aforesaid passed on the said 12th day of May, 1864, and that thereby your petitioner, the said Chicago, Milwaukee & St. Paul Railway Company, became entitled to all the lands so as aforesaid granted by said act of Congress, except such as had theretofore been granted to the said Mcgregor & Sioux City Railway Company.

That no lands were ever conveyed to the said McGregor Western Railroad Company under said grant.

That the distance from South McGregor to said point of junction at Sheldon, Iowa, is about two hundred and twenty-five miles, and that the full grant under the act of Congress would have been one million four hundred and forty thousand acres, as stated by Mr. Lamar, Secretary of the Interior, in his decision.

That only 403,355.41 acres *has* ever been conveyed under said grant to the companies constructing the road, including all lands conveyed to the McGregor & Sioux City Company and to your petitioner, and that the present Commissioner of the General Land Office, in a report to the Secretary of the Interior made on the 19th day of May, 1890, states that, not allowing anything for the construction of the road from McGregor to Calmar and allowing only one-half the grant of the overlapping limits, there would still be due to your petitioner on said grant 870,225.55 acres.

And your petitioner further shows that it is informed and believes that about twenty-one thousand acres of land covered by said grant were in June, 1877, or prior thereto, patented to the State of Iowa for the benefit of the Sioux City & St. Paul Railroad Company.

That said 21,000 acres of land have never been patented
4 to the said Sioux City & St. Paul Railroad Company, and, as your petitioner is informed and believes, it is now claimed that said Sioux City & St. Paul Railroad Company is not entitled to the same, and that it is not proposed to patent them to said company.

That this suit was commenced by the plaintiff to have the patents so as aforesaid given to the State of Iowa set aside and vacated, and to revest said lands in the United States, for the reason that said Sioux City & St. Paul Railroad Company had already received all the lands that it was entitled to under its grant; but your petitioner respectfully shows that said lands are within the limits of the grant made to the State of Iowa for the benefit of your petitioner, and that your petitioner is entitled to said lands under said grant, and that the patents to the State of Iowa should not be vacated or set aside, but that said State should be directed to convey said lands to your petitioner in pursuance of said grant.

That your petitioner has not heretofore made claim to said lands for the reason that it supposed that said Sioux City & St. Paul Railway Company was entitled thereto, but that your petitioner has recently been informed that all or nearly all the lands earned by the said Sioux City & St. Paul Railroad Company under its grant have already been conferred upon it, and that it is not entitled to claim any part or portion of the said 24,000 acres of land, or, if any, only a small part thereof.

And your petitioner prays that it be made a party defendant in this action, and that it be allowed to set up its right and title to said lands and to claim the same as enuring to its benefit under its grant in case it shall be determined that they do not properly belong to the Sioux City & St. Paul Railroad Company.

And your petitioner prays that an order may be made allowing it to intervene in this case for the purpose of setting up its title to said lands, and that this petition may stand as its answer in said case, and that it may be allowed to file such other and further pleadings therein as it shall hereafter be advised.

And your petitioner, as in duty bound, will ever pray, &c.

CHICAGO, MILWAUKEE & ST. PAUL
RAILWAY COMPANY,
By JOHN W. CARY, *General Counsel.*

STATE OF ILLINOIS,
County of Cook, Northern Dist. of Ill., } ss:

John W. Cary, being duly sworn, deposes and says that he is an officer of the Chicago, Milwaukee & St. Paul Railway Company, to wit, its general counsel.

That as such officer he is authorized to make this verification, and makes the same for and on behalf of said company.

That he has read the foregoing petition and knows the contents thereof, and that same is true of his own knowledge, except the matters therein stated on information and belief, and as to those matters he believes it to be true.

JOHN W. CARY.

Subscribed and sworn to before me this 17th day of November, A. D. 1890.

E. A. DRUMMOND, *U. S. Com.*

NORTHERN DISTRICT OF ILLINOIS:

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify that I am well acquainted with the handwriting of E. A. Drummond, whose name is subscribed to the foregoing certificate, and that the same is his genuine signature, and that he was at the time of signing and is now a United States commissioner, duly appointed, qualified, and commissioned by said court, and that as such full faith and credit are and of right ought to be given to all his official acts.

[SEAL.] In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at my office, in Chicago, in said district, this seventeenth day of November, A. D. 1890.

WM. H. BRADLEY, *Clerk.*

Circuit Court of the United States for the Northern District of Iowa, Western Division.

UNITED STATES OF AMERICA
vs.
SIOUX CITY & ST. PAUL RAILROAD COMPANY and Others. } In Equity.

On reading the petition of the Chicago, Milwaukee & St. Paul Railway Company, hereto annexed, and after hearing Mr. William J. Knight, of counsel for said company—

It is ordered that said Chicago, Milwaukee & St. Paul Railway Company be allowed to intervene in this case and file said petition therein, and that said petition may stand as an answer to the bill of complaint in this action and setting up the claims and rights of said company, and that said Chicago, Milwaukee & St. Paul Railway Company be at liberty to file such further answer as it may be advised in said cause, and also to file a cross-bill herein by December 17, 1890.

O. P. SHIRAS, *Judge.*

Dated December 4th, 1890.
Filed Dec. 4th, 1890.

A. J. VAN DUZEE, *Clerk.*

6 And afterwards, to wit, on the 11th day of December, A. D. 1890, there was filed in the office of the clerk of said court in said cause the cross-bill of said Chicago, Milwaukee & St. Paul Railway Company; which cross-bill is in the words and figures following, to wit:

Circuit Court of the United States, Northern District of Iowa, Western Division.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY *vs.* THE U. S. OF AMERICA and THE SIOUX CITY & ST. PAUL R. R. CO.	Cross-bill.	In Equity.

To the judges of the circuit court of the United States for the northern district of Iowa:

The Chicago, Milwaukee & St. Paul Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin and a citizen of the State of Wisconsin, brings this its cross-bill against the Sioux City & St. Paul Railroad Company, a corporation existing by and under the laws of the State of Iowa and a citizen of the State of Iowa and the United States of America.

And thereupon your orator complains and says—

That the United States, one of the defendants herein, did, on or about the — day of ——, file its bill of complaint in this honorable court against the Sioux City & St. Paul Railroad Company for the purpose of having it adjudged that the said Sioux City & St. Paul Railroad Company had no title to the lands described in said bill of complaint, and that the same should be transferred to the United States.

That afterwards and on or about the third day of December, A. D. 1890, your orator filed its petition in this court for leave to intervene in said suit as a defendant and set up its rights to certain lands and property mentioned and described in said bill of the United States.

That said petition of your orator was granted and an order made making your orator a defendant in said suit and allowing said petition to stand as an answer therein and giving to your orator the right to file a cross-bill herein setting up its rights and praying the relief to which it is entitled.

And thereupon your orator, complaining, says—

7 That by an act of Congress entitled "An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State," approved May 12, 1864, it was enacted—

"That there be and is hereby, granted to the State of Iowa for the purpose of aiding in the construction of a railroad from Sioux City, in said State, to the south line of the State of Minnesota at such point as the said State of Iowa may select between the Big

Sioux and the West fork of Des Moines river; also to said State for the use and benefit of the McGregor Western Railroad Company, for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main street, South McGregor, in said State in a westerly direction by the most practicable route, on or near the forty-third parallel of north latitude, until it shall intersect the said road running from Sioux City to the Minnesota State line in the county of O'Brien, in said State every alternate section of land designated by odd numbers for ten sections in width on each side of said roads; but in case it shall appear that the United States have, when the lines or routes of said roads are definitely located, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected for the purpose aforesaid, from the public lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections, designated by odd numbers as shall be equal to such lands as the United States have sold, reserved or otherwise appropriated or to which the right of homestead settlement or pre-emption has attached as aforesaid, which lands thus indicated by odd numbers and sections by the direction of the Secretary of the Interior, shall be held by the State of Iowa for the uses and purposes aforesaid; provided that the lands so selected shall in no case be located more than twenty miles from the lines of said roads; provided further, that any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or other purpose whatever be, and the same are hereby reserved and excepted from the operation of this act, except so far as it may be found necessary to locate the routes of said roads through such reserved lands, in which case the right of way shall be granted subject to the approval of the President of the United States."

That by an act of the legislature of the State of Iowa approved April 20th, 1866, said grant was accepted, and the said grant from McGregor westward was conferred on the said McGregor Western Railroad Company, a corporation then existing under and by virtue of the laws of the State of Iowa, and said company constructed said roads from the foot of Main street, in South McGregor, to Calmar, a distance of about forty-three miles, prior to the first day of January, 1868.

That by an act of the legislature approved February 29th, 1868, the said State of Iowa resumed to itself from said McGregor Western Railroad Company said land grant and all the rights conferred thereby upon the said company, and afterwards the legislature of the State of Iowa, by an act making a grant of land to the
8 McGregor & Sioux City Railway Company or, in case of their failure to accept the same, to the Forty-third Parallel Company, and to execute the trust conferred by act of Congress entitled

"An act for a grant of land to the State of Iowa in alternate sections to aid in the construction of a railroad in said State," approved May 12th, 1864, granted to the McGregor & Sioux City Railway Company all the lands, rights, and privileges that were granted to the said State of Iowa by the said act of Congress approved May 12th, 1864, for the purpose of aiding in the construction of said railroad from McGregor westerly to said point of junction in O'Brien county.

That the said McGregor & Sioux City Railway Company afterwards and prior to 1871 constructed said railroad from Calmar aforesaid to Algona, in said State of Iowa, in all respects as required by said act of Congress, and that the said McGregor & Sioux City Railway Company having failed to construct said road to the junction in O'Brien county, as provided by said act of Congress, the legislature of the State of Iowa, by an act entitled "An act in relation to the lands granted to the State of Iowa by the act of Congress entitled 'An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State,' approved May 12th, 1864, and to grant to and impose upon the Chicago, Milwaukee & St. Paul Railway Company the powers and liabilities mentioned in chapter four, title ten, of the Code," approved February 27th, 1878, resumed to said State all lands or rights to lands theretofore granted to the McGregor & Sioux City Railway Company, and in and by said act conferred all the lands and rights to lands, whether in severalty, jointly, or in common, and including all lands or rights to lands or any interest therein or claims thereto, whether certified to or not, whether embraced in the overlapping or conflicting limits of the two grants or roads made and described by the act of Congress thereinbefore designated, granted to the State of Iowa to aid in the construction of a railroad from a point at or near the foot of Main street, South McGregor, in said State, in a westerly direction by the most practicable route on or near the forty-third parallel of north latitude until it should intersect in the county of O'Brien the railroad running from Sioux City, Iowa, to the Minnesota State line, as provided in said act of Congress, upon the Chicago, Milwaukee & St. Paul Railway Company, which company then owned and operated the said railroad from McGregor to Algona, and granted to and conferred upon said company all of said lands and the rights thereto.

That afterwards and during the year 1878 the Chicago, Milwaukee & St. Paul Railway Company completed said railroad from Algona to said junction in O'Brien county, and thereby the entire road from South McGregor was completed, as provided by and in accordance with the said act of Congress so as aforesaid passed on the said 12th day of May, 1864, and that thereby your orator, the said Chicago, Milwaukee & St. Paul Railway Company, became entitled to all the lands so as aforesaid granted by said act of Congress for the construction of a railroad from McGregor to said junction in O'Brien county except such as had theretofore been granted to the said McGregor & Sioux City Railway Company.

That no lands were ever conveyed to the said McGregor Western Railroad Company under said grant.

That the distance from South McGregor to said point of junction at Sheldon, Iowa, is about two hundred and twenty-five
9 miles, and that the full grant under the act of Congress would have been one million four hundred and forty thousand acres, as stated by Mr. Lamar, Secretary of the Intertor, in his decision.

That only 403,355.41 acres have been conveyed under said grant to the companies constructing the road from McGregor westerly to the junction in O'Brien county, including all lands conveyed to the McGregor & Sioux City Company and to your orator, and that the present Commissioner of the General Land Office, in a report to the Secretary of the Interior made on the 19th day of May, 1890, states that not allowing anything for the construction of the road from McGregor to Calmar and allowing only one-half the grant of the overlapping limits there would still be due to your orator on said grant 870,225.55 acres, which statement is true in fact.

And your orator further shows that it is informed and believes that about twenty-one thousand acres of land covered by said grant to aid in the construction of a railroad from McGregor were, in June, 1877, or prior thereto, patented to the State of Iowa for the benefit of the Sioux City & St. Paul Railroad Company.

Tha t said 21,000 acres of land have never been patented to the said Sioux City & St. Paul Railroad Company, and, as your orator is informed and believes, it is now claimed that said Sioux City & St. Paul Railroad Company is not entitled to the same and that it is not proposed to patent them to said company.

That the suit to which this is a cross-bill was commenced by the plaintiff, The United States, to have the patents so as aforesaid given to the State of Iowa set aside and vacated and to revest said lands in the United States for the reason that the said Sioux City & St. Paul Railroad Company had already received all the lands that it was entitled to under its grant, but your petitioner respectfully shows that said lands are within the limits of the grant made to the State of Iowa for the benefit of your orator, and that your orator is entitled to said lands under said grant, and that the patents to the State of Iowa should not be vacated or set aside, but that the said State of Iowa should be directed to convey said lands to your orator in pursuance of said grant.

10 That your orator has not heretofore made claim to said lands for the reason that it supposed that said Sioux City & St. Paul Railway Company was entitled thereto, but that your orator has recently been informed that all or nearly all the lands earned by the said Sioux City & St. Paul Railroad Company under its grant have already been conferred upon it, and that it is not entitled to claim any part or portion of the said 21,000 acres of land, or, if any, only a small part thereof.

That said 21,000 acres of land are within the overlapping limits of the two grants and were covered by and included in both of said grants, and that as between your orator and the said Sioux City &

St. Paul Railroad Company they would rightfully belong to said last-named company if it had completed its whole line of road so as to be entitled to the full grant made by said act of Congress, but that, inasmuch as said company has not fully completed the railroad specified in said grant, your orator is informed and believes that they have already received all or very nearly all the lands to which they were entitled, and for that reason they are not entitled to this 21,000 acres of land, or, if any, to only a very small part thereof; and your orator charges the truth to be that, inasmuch as said Sioux City & St. Paul Railroad Company are not entitled to said lands, they rightfully belong to your orator under the grant aforesaid, and that your orator is entitled to have the said lands patented to it by the State of Iowa under said grant, and that its title thereto is prior and superior to the title or claim of the plaintiff, The United States; and your orator denies that the United States is entitled to have said lands repatented or transferred by the State of Iowa to the United States, but that said lands of right belong to your orator and should be patented to it by the State of Iowa, and your orator claims said lands, and that its right thereto is prior and superior to all other claiments.

And your orator prays that the defendants herein named may answer this your orator's bill of complaint, and that said lands may be adjudged to belong to your orator and not to the said United States, and that the said State of Iowa may be directed to grant patents thereof to your orator, and that your orator may have such other relief as its case require- and as shall be agreeable to equity.

And may it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, to be directed to the said United States and to the said Sioux City & St. Paul Railroad Company, commanding them and each of them, by a certain day and under a certain penalty therein to be inserted, to be and appear before your honors and then and there to answer the premises and, further, to stand to and abide such orders or decree therein as shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.
JOHN W. CARY, *General Counsel.*

11 NORTHERN DISTRICT OF ILLINOIS, *ss:*

John W. Cary, being duly sworn, deposes and says that he is an officer of the Chicago, Milwaukee & St. Paul Railway Company, to wit, its general counsel.

That as such officer he is authorized to make this verification and makes the same for and on behalf of said company.

That he has read the foregoing cross-bill and knows the contents thereof, and that the same is true of his own knowledge except the matters therein states on information and belief, and as to those matters he believes it to be true.

JOHN W. CARY.

Subscribed and sworn to before me this 9th day of December, A. D. 1890.

W. Q. GRESHAM,
Circuit Judge, Seventh Circuit.

(Endorsed): U. S. circuit court, northern district of Iowa, western division. Chicago, Milwaukee & St. Paul Railway Company *vs.* The United States of America and The Sioux City & St. Paul Railroad Company. Cross-bill. John W. Cary, solicitor. Filed Dec. 11, 1890. A. J. Van Duzee, clerk.

And afterwards, to wit, on the 11th day of December, A. D. 1890, there was filed in the office of the clerk of said court in said cause a subpœna in chancery; which subpœna and return thereon are in words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Ia., Western Division, } *ss:*

The President of the United States to the United States of America and the Sioux City & St. Paul Railroad Company:

We command you and each of you that you appear before the judge of the circuit court of the United States for the northern district of Iowa, at Sioux City, on the first Monday of February, it being the 3rd day — February next, A. D. 1890, to answer to the cross-bill of the Chicago, Milwaukee & St. Paul Railway Company, this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of such judgment being pronounced — you by default.

To the marshal of the northern district of Iowa. Returnable to the February rule day, it being Monday, the 3rd day of February, A. D. 1891.

[SEAL.] Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the U. S., at Sioux City, this the 11th day of December, A. D. 1890, and of the Independence the 115th year.

A. J. VAN DUZEE, *Clerk.*

12 MEMORANDUM.—The within-named defendants are notified that unless they enter their appearance in the clerk's office
[SEAL.] of said court, at Dubuque aforesaid, on or before the day to which date the above writ is returnable, as above stated, the complaint will be taken against them as confessed and a decree entered thereon accordingly.

A. J. VAN DUZEE,
Clerk U. S. C.

(Endorsed.)

UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, }

I, A. J. Van Duzee, clerk of the United States circuit court, northern district of Iowa, certify that on the 11th day of December, A. D. 1890, I mailed a copy of the within subpœna and a copy of the cross-bill mentioned therein, certified under seal of said court, by mail, sealed in envelope addressed to the Hon. Attorney General of the United States, Washington, D. C., and also mailed on same day a certified copy of the within subpœna in an envelope addressed to M. D. O'Connell, U. S. attorney, Fort Dodge, Iowa, and also on same day mailed a certified copy of the within subpœna in an envelope addressed to the Sioux City & St. Paul Railroad Company, Sioux City, Iowa.

A. J. VAN DUZEE,
Clerk U. S. Circuit Court, North. District of Iowa.

No. 104. Filed Dec. 11th, A. D. 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

13 *Subpœna in Chancery.*

UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, Western Division, }

The President of the United States to the United States of America and the Sioux City & St. Paul Railroad Company:

We command you and each of you that you appear before the judge of the circuit court of the United States for the northern district of Iowa, at Sioux City, on the first Monday of February, it being the 3rd day of February next (A. D. 1891), to answer to the cross-bill of the Chicago, Milwaukee & St. Paul Railway Company, this day filed in the office of the clerk of the said court, and then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of such judgment being pronounced — you by default.

To the marshal of the northern district of Iowa. Returnable to the February rule day, it being Monday, the 3d day of February, A. D. 1891.

Witness the Hon. Melville W. Fuller, Chief Justice of the
[SEAL.] Supreme Court of the U. S., at Sioux City, this the 11th day of Dec., A. D. 1890, and of the Independence the 115th year.

[SEAL.] A. J. VAN DUZEE,
Clerk of the U. S. C. C., Northern Dis. of Ia.

MEMORANDUM.—The within-named defendants are norified that unless they enter their appearance in the clerk's office of said court,
[SEAL.] at Dubuque aforesaid, on or before the day to which the above writ is returnable, as ab-ve stated, the complain-

will be taken against them as confessed and a decree entered thereon accordingly.

A. J. VAN DUZEE,
Clerk U. S. C. C., Northern District of Ia.

(Endorsed:) No. 104. Filed Dec. 11th, A. D. 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

UNITED STATES OF AMERICA, }
Northern District of Iowa. }

I, A. J. Van Duzee, clerk of the United States circuit court, northern district of Iowa, certify that on the 11th day of Dec., A. D. 1890, I mailed a copy of the within subpœna and a copy of the cross-bill mentioned therein, certified under seal of said court, by mail, sealed in envelope addresses to the Hon. Attorney General of United States, Washington, D. C, and also mailed on same day a certified copy of the within subpœna in an envelope addressed to M. D. O'Connall, U. S. attorney, Fort Dodge, Iowa, and also on same day mailed a certified copy of the within subpœna in an envelope addressed to the Sioux City & St. Paul Railroad Company, Sioux City, Iowa.

A. J. VAN DUZEE,
Clerk U. S. Circuit Court, Northern Dist. Iowa.

14 And afterwards, to wit, on the 21st day of January, A. D. 1891, there was filed in the office of the clerk of said court in said cause the petition of intervention and cross-bill of Ben. Olson & others; which petition and cross-bill are in words and figures following, to wit:

In the United States Circuit Court, Northern District of Iowa, Western Division.

UNITED STATES OF AMERICA, Plaintiff, }
vs.
THE SIOUX CITY & ST. PAUL RAILROAD Co. and The Chicago, Milwaukee & St. Paul R'y Com. *et al.*, Def'ts. } Petition of Intervention.

To the judges of the circuit court of the United States for the northern district of Iowa:

Your petitioners, Ben. Olson, Peter Anderson, P. O. Kalstrom, M. F. Burk, S. B. Boyington, Otto Larson, J. T. Daniels, James L. Turman, James J. Aylward, Frank Aylward, John Booge, J. T. Hatch, E. J. Pond, Robert W. Hunton, J. M. Manley, Wm. Traver, L. T. Manley, John E. Young, Wm. Cain, Samuel Hibbs, W. H. Buchman, Chas. Gustfason, Alex. Peterson, John Peterson, E. S. Mooney, W. E. Benner, F. A. Boers, Sarah Weaver and C. W. Weaver, J. R. Hedins, John A. Sand, G. W. Watts, S. A. Wilson, Charley G. Johnson, John Ker, Gust Anderson, Daniel Behan, W. J. McCaughty,

Alfred Anderson, Christ. W. Kern, John Burton, J. P. Ostrom, C. H. Arfman, Soren Anderson, W. J. Marsh, August Wallquist, Jacob Dexon, John Penforth, M. D. Finch, J. J. Walker, Wm. R. Powers, W. W. Carr, David S. Calkins, T. W. Whalen, Ed. Harkins, W. H. Bilsland, John Bilsland, Andrew Harkins, John Eveland, James Kelly, John H. Kelly, J. A. Harkins, I. Mulligan, Jeremiah Mullin, Denis Mullin, Daniel Mullin, Ezra Dockstader, James Cutsinger, Samuel Lyle, A. D. Weir, W. R. Davis, John Weir, Mathew McCabe, Thomas Burns, E. W. Farnsworth, James Griffin, A. J. McKeever, Patrick Kelly, R. P. Jones, A. G. Johnson, William Bothwell, James W. Coklin, I. H. Sawyer, show to the court that they are actual settlers on portions of the lands embraced in this controversy, having settled thereon in good faith under the settlement laws of the United States between the years 1881 and 1887, and made large and valuable improvements thereon.

That the defendants The Sioux City & St. Paul Railroad Company and the Chicago, Milwaukee & St. Paul Railway Company each claim to own the said lands under an act of Congress
15 entitled "An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State," approved May 12, 1864, and the several acts of the General Assembly of the State of Iowa, by which said defendants and each of them claim that said grant was conferred upon it, the said lands being within the overlapping limits of the grants of said roads.

That this suit was brought under an act of March 3rd, 1887, entitled "An act to provide for the adjustment of land grants," etc., and your petitioners, as actual settlers on portions of said lands, are entitled to the protection granted by said act, which is that they are entitled to prove up and enter under the settlement laws of the United States as in other like cases.

Your petitioners show that the Sioux City & St. Paul Railroad Company are not entitled to said lands for the reason set forth in the plaintiffs' bill of complaint and the decision of the court, and that the defendant The Chicago, Milwaukee and St. Paul Railway Company are not entitled to said lands because it has already accepted other lands belonging to the Government in lieu of whatever interest they may have had in these lands in controversy and because it has never selected any portion of said lands in controversy as enuring to it under said grant.

Wherefore your petitioner- pray that they may be allowed to intervene in said cause and be made parties defendant; that they may be allowed to file a cross-bill herein against the defendants in said action, and upon the final hearing of said cause that they may be granted such relief as may be in accordance with equity.

JOY HUDSON,
CALL JOY,
Solicitors for Petitioners.

WM. L. JOY, *Of Counsel.*

NORTHERN DISTRICT OF IOWA, } *Western Division.* }

R. P. Jones, being duly sworn, deposes and says that he is one of the plaintiffs in the above-entitled cause and is personally acquainted with the matters set forth in the foregoing petition of intervention and is authorized to make this affidavit for and in behalf of all the plaintiffs; that he has read the foregoing petition of intervention and knows the contents thereof; that the same is true of his own knowledge except the matters therein stated as being on information and belief, and as to those statements he believes them to be true.

R. P. JONES.

Subscribed in my presence and sworn to before me this 21st day of January, A. D. 1891.

J. H. BOLTON,
Deputy Clerk United States Circuit Court,
[SEAL.] *Northern District of Iowa.*

16 On presentation of the foregoing petition of intervention it is—

Ordered that the petitioners therein named may be permitted to intervene in said cause and be made defendants therein and to file a cross-bill therein on or before February 3rd, 1891.

O. P. SHIRAS, *Judge.*

(Endorsed:) In the United States circuit court, northern district of Iowa, western division. United States of America, plaintiff, *vs.* Sioux City & St. Paul R. R. Co. *et al.*, defendants. Petition of intervention. Filed Jan. 21st, 1891. A. J. Van Duzee, clerk. J. H. Bolton, deputy.

17 In the United States Circuit Court, Northern District of Iowa, Western Division.

BEN. OLSON, PETER ANDERSON, P. O. KALSTROM, M. F. Burk, S. B. Boyington, Otto Larson, J. T. Daniesl, James L. Turman, James J. Aylward, Frank Aylward, John Booge, J. T. Hatch, E. J. Pond, Robert W. Huston, J. N. Manley, Wm. Traver, L. T. Manley, John E. Young, Wm. Cain, Samuel Hibbs, W. H. Buchanan, Chas. Gustafson, Alex. Peterson, John Peterson, E. S. Mooney, W. E. Benner, F. A. Beers, Sarah & C. W. Weaver, J. R. Hedins, John A. Sand, S. W. Watts, S. A. Wilson, Charley G. Johnson, John Ker, Gust Anderson, Daniel Behan, W. J. McCaughtry, Alfred Anderson, Christ. W. Kern, John Burton, J. P. Ostrom, C. H. Arfman, Soren Anderson, W. J. Marsh, August Wallquist, Jacob Dexon, John Penforth, —— Kneser, M. D. Finch, J. J. Walker, Wm. R. Powers, Wm. L. Powers, W. W. Carr, David S. Calkins, T. W. Whalen, Ed. Harkins, W. H. Bilsland, John Bilsland, Andrew Harkins, W. H. Bilsland, John Eveland, James Kelly, John Kelly, J. A. Harkins, L. Mulligan, Jeremiah Mullin, Denis Mullin, Daniel Mullin, Ezra Dockstader, James Cutsinger, Samuel Lyle, A. D. Wier, W. R. Davis, John Weir, Matthew McCabe, Thomas Burns, E. W. Farnsworth, James Griffin, A. J. McKeever, Patrick Kelly, R. P. Jones, A. G. Johnson, William Bothwell, James W. Conklin, L. H. Sawyer

vs.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY Company and The Sioux City & St. Paul Railroad Company, Defendants.

Cross-bill. In Equity.

To the judges of the circuit court of the United States for the northern district of Iowa:

The above-named plaintiffs, residents and citizens of the State of Iowa, bring this their cross-bill against the Chicago, Milwaukee & St. Paul Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Wiscousin and a citizen of the State of Wisconsin, and the Sioux City & St. Paul Railroad Company, a corporation existing by and under the laws of the State of Iowa, and thereupon your orator complains and says—

That the above-named plaintiffs are actual settlers on portions of the lands embraced in this controversy, having settled thereon in good faith under the settlement laws of the United States between the years 1881 and 1887, and made large and valuable improvements thereon. The particular tract or parcel of land settled upon and claimed by each of the above-named plaintiffs, together with

the date of his settlement, is hereto attached in a tabulated list, marked "Exhibit A," and made a part hereof.

18 That the defendants The Sioux City & St. Paul Railroad Company and The Chicago, Milwaukee & St. Paul Railway Company, as your orator is informed and believes, each claim to own said lands under an act of Congress entitled "An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State," approved May 12th, 1864, and the several acts of the General Assembly of the State of Iowa, by which said defendants and each of them claim that said grant was conferred upon it.

That all of said lands lying within ten miles of the alleged line of definite location of the Chicago, Milwaukee & St. Paul Railway Company, and also within the ten miles of the alleged line of definite location of the Sioux City & St. Paul Railroad Company, are embraced in Schedule "1" of Exhibit "A," hereto attached.

That all of said lands lying within ten miles of the alleged line of definite location of the Sioux City & St. Paul Railroad Company and more than ten miles, but less than twenty miles, from the alleged line of definite location of the Chicago, Milwaukee & St. Paul Railway Company are embraced in Schedule "2" of Exhibit "A," hereto attached.

That all of said lands lying more than ten miles and less than twenty miles from the alleged line of definite location of both of said roads are embraced in Schedule "3" of Exhibit "A," hereto attached.

That all of said lands lying within the granted limits of the Sioux City & St. Paul Railroad Company and west of the western terminus of the Chicago, Milwaukee & St. Paul Railway Company are embraced in Schedule "4" of Exhibit "A," hereto attached.

That all of said lands are embraced in the decree of this court in this cause, by which decree it is determined that the title to said lands is vested in the United States, and that the Sioux City & St. Paul Railroad Company has not earned and is not therefore entitled to any portion thereof.

This suit having been brought under the act of March 3rd, 1887, entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," the plaintiffs, as actual settlers on the lands, are entitled to the protection granted by said act, which is that they shall be entitled to prove up and enter under the settlement laws of the United States as in other like cases.

Your orator further shows that the said Chicago, Milwaukee & St. Paul Railway Company are not entitled in any event to more than an undivided one-half interest in said overlapping grant, because the act of Congress approved May 12th, 1864, granting said lands to the State of Iowa, was a grant for the joint benefit of each of said roads, and each of said roads thereby took no more than an undivided one-half interest therein.

Your orator further shows that the said Chicago, Milwaukee &

St. Paul Railway Company are not entitled to an undivided one-half interest in said lands because they have received from the Government lands to an equal amount in lieu of its undivided one-half interest in these lands in controversy, which lieu lands were given and received in full satisfaction for the undivided one-half interest the said railway company had in these lands in controversy, in this, that on the 4th day of March, 1879, the Chicago, Milwaukee & St. Paul Railway Company brought an action in the United States circuit court for the district of Iowa against the defendant Sioux City & St. Paul Railroad Company for its proportion of the lands lying within the overlapping limits of said grant, and in the final decree entered in said cause it was provided that each
19 of said roads had and held an undivided half interest in these lands in controversy, and thereupon, on the application of the said Chicago, Milwaukee & St. Paul Railway Company in said cause, the said lands, being the lands in controversy, and other lands lying within the overlapping limits of their said grants were by the court partitioned between the said roads, whereby the lands in controversy were awarded to the Sioux City & St. Paul Railroad Company, and in lieu of the undivided one-half interest of the Chicago, Milwaukee & St. Paul Railway Company in these lands in controversy it was awarded, out of the lands lying in said overlapping limits, certain other lands to an equal amount and of an equal value, which partition was ratified and confirmed by the said Chicago, Milwaukee & St. Paul Railway Company, and it received and accepted the lands awarded to it in lieu of its interest in these lands in controversy, and have sold and disposed of the same and placed the same out of the reach of the United States in this action.

And your orator alleges that by reason of said action the said Chicago, Milwaukee & St. Paul Railway Company are now estopped in equity from claiming any interest in the lands in controversy.

Your orator further shows that the Chicago, Milwaukee & St. Paul Railway Company are not entitled to any of the lands in controversy lying outside of the ten-miles limit of the alleged line of definite location of its said road, because it has never selected any of said lands and the same have never been selected by the Secretary of the Interior, as provided by the act of May 12*ht*, 1864.

And your orator further alleges that by reason of the fact that the said Chicago, Milwaukee & St. Paul Railway Company has failed for twelve years to select or make any claim to the lands in controversy and has, with full knowledge, permitted these plaintiffs to make large and expensive improvements upon their lands that the said railway company ought now in equity to be estopped from having or claiming any interest therein.

And your orator prays that the defendants herein named may answer this bill of complainant; that said lands may be adjudged to belong to the United States, and the right of possession thereof, under the settlement laws of the United States, may be adjudged to belong to the plaintiffs and not to the defendants, and that the plaintiffs may have such other and further relief as their case may deserve and as shall be agreeable to equity.

And may it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this court, to be directed to the Sioux City & St. Paul Railroad Company and the Chicago, Milwaukee & St. Paul Railway Company, commanding them and each of them to appear before this court and there answer this bill of complaint and, further, to abide such order or decree as shall be agreeable to equity and good conscience.

JOY HUDSON,
CALL JOY,
Solicitors for Plaintiffs.

WM. L. JOY, *Of Counsel.*

20 NORTHERN DISTRICT OF IOWA, *Western Division.*

R. P. Jones, being duly sworn, deposes and says that he is one of the plaintiffs in the above-entitled cause and is personally acquainted with the matters set forth in the foregoing bill of complaint and is authorized to make this affidavit for and in behalf of all the plaintiffs; that he has read the foregoing cross-bill and knows the contents thereof; that the same is true of his own knowledge except the matters therein stated as being on information and belief, and as to those statements he believes them to be true.

R. P. JONES.

Subscribed in my presence and sworn to before me this 21st day of January, A. D. 1891.

[SEAL.]

J. H. BOLTON,
Deputy Clerk United States Circuit Court,
Northern District of Iowa.

Schedule 2.

Name.	P't sec.	Sec.	T'w'p.	R'ge.	Date set.
Anderson, Peter	S w q'r.	7	95	41	M'ch, 1884.
Kalstrom, P. O.	S e q'r.	7	95	41	Apr., 1884.
Burke, M. F.	S h'f n e q'r.	7	95	41	Apr., 1882.
Sand, John A.	S h'f n w q'r.	9	95	42	Aug., 1884.
Watts, G. W.	S h'f n e q'r.	11	95	42	Spring, 1887.
Wilson, S. A.	S e q'r.	11	95	42	Feb., 1885.
Johnson, Charley G.	N w q'r.	15	95	42	May, 1884.
Ker, John.	S e q'r.	15	95	42	May, 1887.
Anderson, Gust.	S w q'r.	15	95	42	May, 1884.
Behan, Daniel.	N e q'r.	15	95	42	Spring, 1884.
McCaughty, W. J.	N e q'r.	17	95	42	Apr., 1884.
Anderson, Alfred.	S w q'r.	17	95	42	Spring, 1884.
Kern, Christ.	S e q'r.	17	95	52	Spring, 1884.
Burton, John	N w q'r.	17	95	42	Spring, 1887.
Ostrom, J. P.	N w q'r.	21	95	52	March, 1884.
Arfman, C. H.	S w q'r.	21	95	42	M'ch, 1886.

Name.	P't sec.	Sec.	T'w'p.	R'ge.	Date settlement.
Boyington, J. B....	S h'f n h'f ..	11	95	41	Feb., 1887.
Larson, Otto.....	N e q'r.....	13	95	41	May, 1882.
Daniels, J. T.....	S e q'r.....	13	95	41	March, 1885.
Aylward, James J..	N e q'r.....	15	95	41	Feb., 1884.
Truman, James L..	S w q'r.....	15	95	41	May, 1884.
Aylward, Frank ...	N w q'r.....	15	95	41	Spring, 1884.
Booge, John.....	S w q'r.....	19	95	41	July, 1883.
Hatch, J. T.....	N w q'r.....	23	95	41	Oct., 1883.
Pond, E. J.....	N e q'r.....	23	95	41	May, 1882.
Huston, Robert W..	N e q'r.....	25	95	41	Oct., 1886.
Manley, J. N.....	S w q'r.....	25	95	41	Oct., 1884.
Traver, Wm.....	S e q'r.....	25	95	41	March, 1886.
Manley, L. T.... ..	N w q'r.....	25	95	41	July, 1885.
Young, John E.....	N e q'r.....	27	95	41	April, 1884.
Cain, Wm.....	S w q'r.....	27	95	41	Oct., 1882.
Anderson, Soren ...	N e q'r.....	23	95	42	April, 1884.
Marsh, W. J.....	S w q'r.....	23	95	42	Spring, 1885.
Wallquist, August..	N w q'r.....	23	95	42	April, 1884.
Dexon, Jacob.....	S e q'r.....	23	95	42	May, 1884.
Kneser, John P...	N e q'r.....	27	95	42	Spring, 1884.
Jones, R. P.....	S w q'r.....	13	95	41	Feb., 1886.
Johnson, A. G.....	N w q'r.....	13	95	41	July, 1884.

EXHIBIT "A."

Schedule 1.

Name.	P't sec.	Sec.	T'w'p.	R'ge.	Date settlement.
Olson, Ben.....	N w q'r.....	5	95	41	April, 1884.
Burk, M. F.....	N h'f n e q'r.	7	95	41	April, 1882.
Hibbs, Samuel.....	E h'f s w q'r.	35	97	41	
Buchanan, W. H...	N e of s e h'f.	35	97	41	M'ch, 1889.
Gustafson, Chas....	N e q'r.....	1	95	42	April, 1884.
Peterson, Alex....	S e q'r.....	1	95	42	April, 1884.
Peterson, John.....	S w q'r.....	1	95	42	April, 1884.
Mooney, E. S.....	N e q'r....	5	95	42	August, 1885.
Benner, W. E.....	S w q'r.....	5	95	42	March, 1884.
Beers, F. A.....	S e q'r.....	5	95	42	Nov., 1885.
Weaver, O. W. & Sarah.	E h'f n e q'r.	7	95	42	Spring, 1884.
Hedins, J. R.....	S w q'r....	9	95	42	Spring, 1884.
Sand, Joyn A.....	N h'f n w q'r.	9	95	42	August, 1884.

Schedule 1—Continued.

Name.	P't sec.	Sec.	T'w'p.	R'ge.	Date settlement.
Finch, M. D.....	S w q'r....	3	96	42	Spring, 1882.
Walker, J. J.....	N w q'r.....	3	96	42	Spring, 1881.
Powers, Wm. R....	S e q'r.....	5	96	42	Spring, 1884.
Powers, Wm. L	S w q'r.....	5	96	42	Fall, 1884.
Carr, W. W....	E h'f s e q'r.	7	96	42	Filed 1887.
Calkins, David S...	S w q'r.....	11	96	42	Feb., 1884.
Whalen, T. W.....	N w q'r.....	11	96	42	Spring, 1885.
Harkins, Ed.....	S e q'r.....	11	96	42	Spring, 1882.
Bilsland, W. H.....	N e q'r.....	15	96	42	Spring, 1885.
Bilsland, John.....	N w q'r.....	15	96	42	Spring, 1884.
Harkins, Andrew...	S w q'r.....	15	96	42	Summer, 1882.
Eveland, John.....	S e q'r.....	15	96	42	May, 1884.
Kelly, James.....	N w q'r.....	17	96	42	April, 1884.
Kelly, John H.....	S w q'r....	17	96	42	Spring, 1884.
Harkins, J. A.....	E h'f & n w q'r.	23	96	42	Fall, 1882.
Mulligen, L.....	N w q'r.....	29	96	42	June, 1884.
Mullin, Jeremiah...	N w q'r.....	33	96	42	June, 1884.
Mullin, Dennis.....	S w q'r.....	33	96	42	June, 1884.
Mullin, Daniel.....	N e q'r.....	33	96	42	June, 1884.
Dockstader, Ezra...	S e q'r.....	33	96	42	May, 1885.
22					
Cutsinger, James...	N w q'r.....	3	97	42	Feb., 1885.
Lyle, Samuel	S e q'r.....	3	97	42	May, 1885.
Davis, W. R.....	N w q'r.....	17	97	42	April, 1888.
Weir, John	S w q'r.....	17	97	42	Spring, 1887.
McCabe, Matthew...	E h'f e h'f...	19	97	42	Spring, 1887.
Burns, Thomas.....	E h'f e h'f...	25	97	42	June, 1883.
Burns, William	W h'f e h'f..	25	97	42	June, 1886.
Farnsworth, E. W..	S w q'r.....	29	97	42	April, 1885.
Griffin, James	S e n e & n e s e.	31	97	42	Spring, 1882.
McKeever, A. J. ...	S w *w*'r.....	33	97	42	April, 1887.
Keely, Patrick.....	S e q'r.....	33	97	42	Spring, 1886.
Bothwell, William..	N e q'r.....	3	96	42	Sept., 1883.

Schedule 4.

Weaver, G. W. & Sarah W.	W h'f n e q'r.	7	95	42	Spring, 1884.
Weir, A. D.....	N e n w, s w n e, & n w s e.	7	97	42	March, 1887.
Sawyer, I. K.....	S w q'r.....	19	95	42	Jan'y, 1887.

(Endorsed:) In the United States circuit court, northern district of Iowa, western division. Ben. Olson *et al. vs.* Chicago, Milwaukee & St. Paul R. R. Co. *et al.* Cross-bill. In equity, original. Filed February 2, 1891. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

23 And afterwards, to wit, on the 6th day of April, A. D. 1891, there was filed in the office of the clerk of said court in said cause answer of Chicago, Milwaukee & St. Paul Railway Company to the cross-bill of Ben. Olson *et al.;* which answer is in the words & figures following, to wit:

In the United States Circuit Court, Northern District of Iowa, Western Division.

BEN. OLSON *et al.*
vs.
CHICAGO, MILWAUKEE & ST. PAUL R'Y CO. *et al.*

The Chicago, Milwaukee & St. Paul Railway Company, defendant, saving and reserving to itself all manner of benefits and exceptions to the many errors and insufficiencies in the complainants' said cross-bill contained, for answer thereunto says—

That it claims to own the lands mentioned in said cross-bill; that it denies the allegations in said cross-bill contained; that it is not the owner of said lands; insists that it is entitled to the whole of said lands, and that it has not received other lands in lieu of the lands in question, or that defendant's lands were given and received in full satisfaction of its interest in said lands.

Admits that on or about the 4th day of March, 1879, this defendant brought an action in the United States circuit court of the district of Iowa against the defendant Sioux City and *the* St. Paul Railway Company, but denies that the title of this defendant to the lands in controversy was -judicated in said suit; denies that it is estopped to claim its interests in said lands.

Denies that it has ever permitted the plaintiffs to make expensive or any improvements upon these lands.

Further denies that said plaintiffs named in said cross-bill were *bona fide* settlers on said lands, but that they settled thereon with full knowledge that said lands were railroad lands and that they could acquire no title thereto.

And, further answering as to all the rest and residue of said matters contained in said cross-bill, the said defendant says that it has no knowledge or information sufficient to form a belief, and therefore denies the same to be true.

And humbly prays to be hence dismissed with its reasonable costs most wrongfully sustained.

JOHN W. CARY, *Solicitor.*

Endorsed: In the U. S. circuit court, northern district of Iowa, western division. Ben. Olson *et al. vs.* C., M. & St. P. R'y Co. *et al.* Answer of C., M. & St. P. R'y Co. to cross-bill. Filed April 6th, 1891. A. J. Van Duzee, by J. H. Bolton, deputy.

24 And afterwards, to wit, on the 5th day of May, A. D. 1891, there was filed in the office of the clerk of said court in said cause amended cross-bill of the Chicago, Milwaukee & St. Paul Railway Company, admendment to bill of complaint, reply of the U. S. to the answer of the defendant C., M. & St. Paul R'y Company, answer of the U. S. of America to the amended cross-bill of the C., M. & St. Paul Railway Company, agreed statement of facts, and replication of Ben. Olson *et al.*, complainants in cross-bill, to the answer of the Chicago, Milwaukee & St. Paul Railway Company; which replication is in the words and figures following, to wit:

Circuit Court of the United States, Northern District of Iowa, Western Division.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY *vs.* THE UNITED STATES OF AMERICA & SIOUX CITY & ST. PAUL RAILROAD COMPANY.	Amended Cross-Bill. In Equity.

To the judges of the circuit court of the United States for the northern district of Iowa:

The Chicago, Milwaukee & St. Paul Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin and a citizen of the State of Wisconsin, brings this its cross-bill against the Sioux City & St. Paul Railroad Company, a corporation existing under and by the laws of the State of Iowa, and the United States of America.

And thereupon your orato- complains and says—

That The United States, one of the defendants herein, did on or about the 1st day of October, 1889, file its bill of complaint in this honorable court against the Sioux City & St. Paul Railroad Company for the purposes of having it adjudged that the said Sioux City & St. Paul Railroad Company had no title to certain lands described in said bill of complaint and claiming that the same should be transferred to the United States.

That afterwards and on or about the third day of December, A. D. 1890, and while said bill was pending in court and undetermined your orator filed its petition in this court for leave to intervene in said suit as a defendant and set up its rights to certain of said lands and property mentioned and described in said bill of the United States.

That said petition of your orator was granted by this honorable court and an order made making your orator a defendant in said suit and allowing said petition to stand as an answer thereon, and also giving to your orator the right to file a cross-bill herein setting up its rights and praying the relief to which it claims it is entitled.

And thereupon your orator, complaining, says—

That by an act of Congress entitled "An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction

of a railroad in said State," approved May 12th, 1864, it was
25 enacted—

"That there be, and is hereby, granted to the State of Iowa for the purpose of aiding in the construction of a railroad, from Sioux City, in said State, to the south line of the State of Minnesota, at such point as the said State of Iowa may select between the Big Sioux river and West fork of the Des Moines river; also to said State for the use and benefit of the McGregor Western Railroad Company for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main street South McGregor in said State in a westerly direction by the most practicable route on or near the forty-third parallel of north latitude until in shall intersect the said road running from Sioux City to the Minnesota State line in the county of O'Brien in said State every alternate section of land designated by odd numbers for ten sections in width on each side of said roads; but in case it shall appear that the United States have when the lines or routes of said roads are definitely located sold any section of any part thereof granted as aforesaid or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected for the purpose aforesaid, from the public lands of the United States nearest to the tiers of sections above specified so much land in alternate sections or parts of sections designated by odd numbers as shall be equal to such lands as the United States have sold reserved or otherwise appropriated or to which the right of homestead settlement or pre-emption has attached as aforesaid which lands thus indicated by odd numbers and sections, by the direction of the Secretary of the Interior shall be held by the State of Iowa for the uses and purposes aforesaid; provided that the lands so selected shall in no case be located more than 20 miles from the lines of said roads; provided, further, that any and all lands heretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or other purposes whatever be, and the same are hereby reserved and excepted from the operation of this act except as far as it may be found necessary to locate the routes of said roads through reserved lands, in which case the right of way shall be granted subject to the approval of the President of the United States."

That by an act of the legislature of the State of Iowa approved on the 3rd day of April, 1866, all the lands, rights, powers, and privileges conferred upon the State of Iowa by an act of Congress entitled "An act for a grant of land to the State of Iowa in alternate sections to aid in the construction of a railroad in the State of Iowa," approved May 12, 1864, *was* accepted by said State, and so much of said lands, interests, rights, powers, and privileges as *were* or might be granted and conferred in pursuance of said act of Congress for the purpose of aiding in the construction of a railroad from Sioux City, in the State of Iowa, to the south line of the State of Minnesota, at such point as the State of Iowa might select between

the Big Sioux river and the West fork of the Des Moines river, was disposed of, granted, and conferred upon the Sioux City & St. Paul Railroad Company.

26 By an act of the legislature of the State of Iowa approved April 20th, 1866, said grant was accepted, and said act was afterwards amended by an act of the legislature approved on the 24th day of March, 1868, by correcting a clerical error therein, and that in and by said act of Congress it was provided that so much of said grant as was intended for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main street, South McGregor, in said State, in a westerly direction by the most practicable route on or near the forty-third parallel of north latitude until it shall intersect the said road running from Sioux City to the Minnesota State line, in the county of O'Brien, in said State, was granted to said State for the use and benefit of the McGregor Western Railroad Company, providing, however, that if the said McGregor Western Railroad Company or its assigns should fail to complete at least 20 miles of its said road during each and every year from the date of its acceptance of the grant provided for in said act, then the State might resume said grant and so dispose of the same as to secure the completion of a road on said line and upon said terms and within such time as the State should determine; that said McGregor Western Railway Company constructed said road from the foot of Main street, in South McGregor, to Calmar, in the State of Iowa, a distance of about 43 miles, prior to the first day of January, 1868.

That by an act of the legislature approved February 29th, 1868, the said State of Iowa resumed to itself from said McGregor Western Railroad Company said land grant and all the rights conferred thereby upon the said company, and afterwards the legislature of the State of Iowa, by an act making a grant of land to the McGregor & Sioux City Railway Company or, in case of their failure to accept the same, to the Forty-third Parallel Company, and to execute the trust conferred by an act of Congress entitled—

"An act for a grant of land to the State of Iowa in alternate sections to aid in the construction of a railroad in said State," approved May 12th, 1864, granted to McGregor & Sioux City Railway Co. all the lands, rights, and privileges that were granted to the said State of Iowa by the said act of Congress approved May 12th, 1884, for the purpose of aiding in the construction of said railroad from McGregor westerly to said point of junction in O'Brien county.

That the said McGregor & Sioux City Railway Company afterwards and prior to 1871 constructed said railroad from Calmar aforesaid to Algona, in said State of Iowa, in all respects as required by said act of Congress, and that the said McGregor & Sioux City Railway Company having failed to construct said road to the junction in O'Brien county, as provided by said act of Congress, the legislature of the State of Iowa, by an act entitled An act in relation to the lands granted to the State of Iowa by the act of Congress entitled "An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State," approved May 12th, 1864, and to grant to and impose upon the Chicago, Milwaukee

& St. Paul Railway Company the powers and liabilities mentioned in chapter four, title ten, of the Code," approved February 27th, 1878, resumed to said State all lands or rights to lands theretofore granted to the McGregor & Sioux City Railway Company, and in and by said act conferred all the lands and rights to lands, whether in severalty, jointly, or in common, and including all lands or rights to lands or any interest therein or claims thereto, whether certified to or not, whether embraced in the overlapping limits or conflicting limits of the two grants of roads made and described by the act of Congress thereinbefore designated, granted to the State of Iowa to aid in the construction of a railroad from a point at or near the foot of Main street, South McGregor, in said State, in a westerly
27 direction by the most practicable route on or near the forty-third parallel of north latitude until it should intersect in the county of O'Brien the railroad running from Sioux City, Iowa, to the Minnesota State line, as provided in said act of Congress, upon the Chicago, Milwaukee & St. Paul Railway Company, which company then owned and operated the said railroad from McGregor to to Algona, and granted to and conferred upon said company all of said lands and the rights thereto.

That afterwards and during the year 1878 the said Chicago, Milwaukee & St. Paul Railway Company completed said railroad from Algona to said junction in O'Brien county, and thereby the entire road from South McGregor was completed, as provided by and in accordance with the said act of Congress so as aforesaid passed on the said 12th day of May, 1864, and that thereby your orator, the said Chicago, Milwaukee & St. Paul Railway Company, became entitled to all the lands so as aforesaid granted by said act of Congress for the construction of a railroad from McGregor to said junction in O'Brien county except such as had heretofore been granted to the said McGregor & Sioux City Railway Company.

That no lands were ever conveyed to or secured by the said McGregor Western Railroad Company under said grant.

That the distance from South McGregor to said point of junction at Sheldon, Iowa, is about two hundred and twenty-five miles, and that the full grant under the act of Congress would have been one million four hundred and forty thousand acres, as stated by Mr. Lamar, Secretary of the Interior, in his decision.

That only 399,565.72 acres have ever been conveyed under said grant to the companies constructing the road from McGregor westerly to the junction in O'Brien county, including all lands conveyed to the McGregor & Sioux City Company and to your orator, and that the present Commissioner of the General Land Office, in a report to the Secretary of the Interior made on the 19th day of May, 1890, states that, not allowing anything for the construction of the road from McGregor to Calmar and allowing only one-half the grant of the overlapping limits, there would still be due your orator on said grant 870,225.55 acres, which statement is true in fact.

That all the rights to said lands, if any, acquired by the said McGregor Western Railroad Company and by the said McGregor and Sioux City Railway Company have been transferred to the

complainant, and that said complainant is now the owner and entitled to the benefit thereof; that all the right, title, interest, and estate in said lands, as trustee or otherwise, was granted and conferred upon said complainant on condition of its completing said railroad as provided in said act of 1878, conferring said lands upon the complainant, and that it has fully performed on its part all requirements made by said act of the legislature or by said act of Congress to entitle it to said lands.

And that said complainant is entitled under said grant to at least 870,225 55 acres, as above reported by the Commissioner of the General Land Office in his report of the 19th of May, 1890, provided that said lands were contained within the limits of said grant belonging to the United States at the time of making of said grant by the passage of said act on the 12th day of May, 1864, and that the right and title of said complainant to all such lands is prior and superior to any right or claim of the United States thereto.

And your orator further shows that it is informed and believes that about twenty-one thousand acres of land covered by said
28 grant to aid in the construction of a railroad from McGregor west to a junction of the Sioux City & St. Paul railroad were, in June, 1877, or prior thereto, patented to the State of Iowa through a mistake or error for the benefit of the Sioux City & St. Paul Railroad Company.

That said 21,000 acres of land have never been patented to the said Sioux City & St. Paul Railroad Company, and, as your orator is informed and believes, said Sioux City & St. Paul Railroad Company is not entitled to the same, and that it is not proposed to patent them to said company.

That the suit to which this is a cross-bill was commenced by the plaintiff, The United States, to have the patents so as aforesaid given to the State of Iowa set aside and vacated and to revest said lands in the United States, for the reason that said Sioux City & St. Paul Railroad Company has already received all the land that it was entitled to under its grant and is not entitled to said lands; but your petitioner respectfully shows that said lands are within the limits of the grant made to the State of Iowa for the benefit of your orator, and that said Sioux City & St. Paul Railroad Company has received its full complement of lands; that your orator is entitled to said lands under said grant to the State of Iowa to aid in the construction of a railroad from McGregor to said junction in O'Brien county, and that the patents to the State of Iowa should not be vacated or set aside, but that said State should be directed to convey said lands to your orator in pursuance of said grant.

That your orator has not heretofore made claim to said lands for the reason that it supposed said Sioux City & St. Paul Railway Company had earned said lands and was entitled thereto, but that your orator has recently been informed that all the lands earned by the said Sioux City & St. Paul Railroad Company under its grants have already been conferred upon it, and that it is not entitled to claim any part or portion of the said 21,000 acres of land.

That the map hereto attached as Exhibit "A" is a correct repre-

sentation of the lands granted by said act of Congress of May 12th, 1864, so far as said grants or the lines of said grants overlap each other; that the lines of said railroads as definitely located and the lines of actual construction are correctly marked thereon, and that the granted or ten-mile limit of each of said roads through said grant and the indemnity or 20-mile limit of each of them are correctly marked thereon as finally adjusted by the General Land Office of the United States.

That the grant and indemnity limit lines of the McGregor road are marked thereon in blue and the grant and indemnity limits of the Sioux City & St. Paul road are marked thereon by red lines; that the lands of said grant which are within the granted limits of each of said roads are marked in red; that the lands within the granted limits of the McGregor road, and which are also within the indemnity limits of the St. Paul & Sioux City road, are marked in green, and that the lands which are situated within the granted limits of the Sioux City & St. Paul road, and are also the indemity limits of the McGregor road, are marked in blue, and that the lands which are situated within the idemnity limits of each of said lines and not within the granted limuts of either are marked in yellow on said map.

29 That of the lands mentioned and described in the original bill of complaint about 21,000 acres are situated in said so-called overlapping limits of said grants and are the lands now in controversy and are described as follows:

Class 1. Sections 3, 9, 17, 25, 35, the south half of 33, the east quarter of 19, and the southeast quarter of the northeast quarter and the northeast quarter of the southeast quarter of 31, all in town. 97 north, of range 42 west; the south half of section 29, town. 97, range 42.

Sections 3, 11, 15, 23, 29, and 33, the south half of 5, the west half of 17, the east half of the southeast quarter of seven, and the east half of the southeast quarter of 31, all in town. 96 north, of range 42 west.

The S. W. ¼ of S. W. ¼ sec. 13, town. 97, range 41, & S. W. of N. W. sec. 7, T. 97, range 40; the E. ½ of S. W. & N. E. of S. E. of sec. 35, t'w'p 97, R. 41.

Sections 1 and 5 except the southwest quarter of the southeast quarter of 5, the northeast quarter of the northeast quarter of 7, the north quarter of 9, in town. 95 north, of range 42 west; the northeast quarter of the northwest quarter of 3, the southeast quarter of the northeast quarter of 15, town. 96, range 41, and the west half of section 5 and the north quarter of section 7, of town. 95, range 41 west; all of which said lands are situated within the so-called granted or ten-mile limits of each of said railroads.

Class 2. Sections 15, 17, and 21, the south three-quarters of 9, the south three-quarters of 11, the east half of the southeast quarter and the southeast quarter of the northeast quarter of 7, and the east quarter of 19, all in town. 95 north, range 42 west, and the south three-quarters of section 7 of town. 95 of range 41 west; all of which lands are situated within the so-called granted or ten-mile

limits of the St. Paul & Sioux City railroad and within the indemnity limits of the Chicago, Milwaukee & St. Paul railway.

Class 3. Sections 23 and 27, the south half of 29, and the east half of the northeast quarter of 31, all in town. 95 north, of range 42.

Sections 13, 15, 23, 25, and 27, the south three-quarters of 11, and the west half of 19, all in town. 95 north, of range 41 west; the S. W. ¼ & S. ¼ N. W. ¼ of 9, in town. 95 north, of range 40 west.

Sections 15 and the northwest quarter of 17, in town. 98 north, of range 38 west; all of which lands are situated in the indemnity limits of each of said railroad companies, but no part of which is included within the granted limits of either.

That all of said lands described in class 1 are within the granted or ten-mile limits of the Chicago, Milwaukee & St. Paul Railway Company, and that all of classes numbered two and three are within the so-called indemnity limits of said company, and that they were the property of the said United States at the time of making said grant, on the 12th day of May, 1864, and were subject to said grant; that by the terms and conditions of said grant, as provided in said act of Congress, all the lands within ten miles of either of said railways as the same should be thereafter *be* definitely located *was* granted to the State of Iowa to aid in the construction of said railroads, with the right of selection from the indemnity limits to make good any deficiencies of land in said granted limits, and that in and by said grant all right, title *title*, and interest of the United States in said lands to said State of Iowa — for that purpose.

That the right and title to every part and parcel of said lands so granted within ten miles of the located line of the said Chicago, Milwaukee & St. Paul railroad as afterwards definitely located passed by said grant to said State for the benefit of said company, with the right of selection to make good deficiencies on the completion of said road, subject only to the right of the St. Paul & Sioux City Company to so much of said lands within the overlapping limits, not exceeding one-half thereof, as might be required to make good the grant to that company as provided in said act of Congress.

That the whole of the lands within said ten-mile or granted limits, with the right of selection for deficiencies, passed to the State for the benefit of the line of the Chicago, Milwaukee & St. Paul Railway Company as against the United States, and that it was competent for the State to confer the whole thereof upon said Chicago, Milwaukee & St. Paul Railway Company, subject only to the rights of said Sioux City & St. Paul Company, and that if no road had ever been constructed by the Sioux City & St. Paul Company and said grant had been suffered to lapse the Chicago, Milwaukee & St. Paul Railway Company would have been entitled to all the lands so granted in said overlapping limits, and that the Sioux City & St. Paul Railway Company having received all the lands to which it was entitled under its grant, aside from the lands in question, has no right or title to them, and that the fact that they might have selected them or have earned said lands by the completion of

their entire grant gives the United States no right or authority to retake said lands while the grant to the Chicago, Milwaukee & St. Paul Railway Company is without the necessary amount of lands granted to it by said act of Congress.

That the act of the legislature of the State of Iowa conferring said grant upon the Chicago, Milwaukee & St. Paul Railway Company provided "that all lands and rights to lands, whether in severality, jointly, or in common, and including all lands or rights to lands or any interest therein or claims thereto, whether certified or not, embraced within the overlapping or conflicting limits of the two grants or roads made and described by the act of Congress hereinafter designated, granted to the State of Iowa * * * be, and the same are hereby, granted to and conferred upon the Chicago, Milwaukee & St. Paul Railway Company."

This broad language conferred all possible rights which the State possessed under said act of Congress to the complainant, that the said Sioux City and St. Paul Railroad Company originally claimed all the lands in said overlapping limits, for the reason that it first constructed its railway through said lands, and on that claim said lands, together with other lands were certified to the said State of Iowa for the benefit of said Sioux City & St. Paul Railway Company; that in consequence of said claim it became necessary for this company to bring suit in order to establish its rights in said overlapping limits as against the said Sioux City & St. Paul railroad; that such suit was instituted by this company by filing its bill in the circuit court of the United States for the district of Iowa on the 4th day of March, 1879, in which it was finally adjudicated between said companies that the lands in said overlapping
31 limits should be divided between said companies, giving to each of said companies one-half the lands within the granted or indemnity limits of both companies, and giving to each company the right to the lands which are situated in its granted limits in preference to the claim of the other, for the reason that such lands were within its indemnity limits and that a division was made of said lands in pursuance of said decision, and that in that division the lands in controversy were a portion of the lands which were adjudged to belong to the Sioux City & St. Paul Company as against this complainant.

That the United States was not a party to that suit; that the only parties thereto or who appeared therein were this complainant and the Sioux City & St. Paul Railway Company, and that it was an adjudication only of the rights of said parties as against each other.

That the adjudication was neither for nor against the United States or any other person not a party to said suit, but it simply decided the rights of the two railroad companies as against each other and determined the division of the land as between them.

That the whole proceeding was upon the basis that the Sioux City & St. Paul Railway Company had earned the lands in question and was entitled thereto.

The question of whether the Sioux City & St. Paul Company

had fully performed on its part the terms of the grant, so as to entitle it to the lands, was not in litigation, and, so far as that question was concerned in that litigation, it was taken for granted that said company had so performed, and that it was entitled to the full amount of the grant as made to it; but the decree made therein was no adjudication of the right of that company to said lands and cannot be used by the United States as establishing its own right to said lands or as barring the right of the complainant to insist that *that* those lands are included within the grant to it by the acts of Congress, and that it is not a decree or adjudication between the parties in interest in this action or as barring or settling the rights of either.

That it now appears that said Sioux City & St. Paul Company at the time of said litigation had no right or interest in the lands in question and no right to claim them, and that the proper parties necessary to settle the rights to said lands were not before the court, and for that reason the decree in that respect is of no force as settling the right to those lands.

That said 21,000 acres of land are within the overlapping limits of the two grants and were covered by and included in both of said grants, and that as between your orator and the said Sioux City & St. Paul Railroad Company they would rightfully belong to said last-named company if it had completed its whole line of road so as to be entitled to the full grant made by said act of Congress; but that, inasmuch as said company had not fully completed the railroad specified in said grant, your orator is informed and believes that it has already received all the lands to which it was entitled, and for that reason that it is not entitled to the lands in controversy; and your orator charges the truth to be that, inasmuch as said Sioux City & St. Paul Railroad Company are not entitled to said lands, they rightfully belong to your orator under the grant aforesaid, and that your orator is entitled to have said lands patented to it by the State of Iowa under said grant, and that its title thereto is prior and superior to the title or claim of the plaintiff, The United
32 States; and your orator denies that the United — is entitled to have said lands repatented or transferred by the State of Iowa to the United States, but that said lands of right belong to your orator and should be patented to it by the State of Iowa; and your orator claims said lands, and that its right thereto is prior and superior to all other claimants.

And your orator prays that the defendants herein named may answer this your orator's bill of complaint, and that said lands may be adjudged to belong to your orator and not to the said United States, and that the said State of Iowa may be directed to grant patents thereof to your orator, and that your orator may have such other and such further relief as its case shall require and as shall be agreeable to equity.

And may it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court to be directed to the said United States and to the said Sioux City & St. Paul Railroad Company, commanding them and each of them

by a certain day and under a certain penalty therein to be inserted to be and appear before your honors, and then and there to answer the premises, and further to stand to and abide such order or decree therein as shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
By JOHN W. CARY, *General Counsel.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

John W. Cary, being duly sworn, deposes and says that he is an officer of the Chicago, Milwaukee & St. Paul Railway Company, to wit, its general counsel.

That as such officer he is authorized to make this verification, and makes the same for and on behalf of said company.

That he has read the foregoing cross-bill and knows the contents thereof, and that the same is true of his own knowledge except the matters therein stated on information and belief, and as to those matters he believes it to be true.

JOHN W. CARY.

Subscribed and sworn to before me this 5 day of May, A. D. 1891.
[SEAL.] A. J. VAN DUZEE, *Clerk.*

(Endorsed:) U. S. circuit court for the northern district of Iowa, western division. United States *vs.* Sioux City & St. Paul Railway Co. & others. Amended cross-bill. Filed May 5th, 1891. A. J. Van Duzee, clerk.

(Here follows map marked p. 32*a*.)

33 In the Circuit Court of the United States for the Northern District of Iowa, Western Division, May Term, 1891.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
THE SIOUX CITY & ST. PAUL RAILROAD Company, Elias F. Drake, Amherst H. Wilder, & The Chicago, Milwaukee & St. P. R'y Co., Defendants.
} Amendment to Bill of Complaint.

To the judges of the circuit court of the United States for the northern district of Iowa:

The United States of America, by leave of court first obtained, amends its original bill of complaint herein and makes The Chicago, Milwaukee & St. Paul Railway Company, a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, a party defendant herein, and thereupon your orator complains and says—

That after the submission of the original cause herein against the defendants The Sioux City & St. Paul Railroad Co., Elias F.

Drake, and Amherst H. Wilder, and after the final decision of the cause, but before the settlement and filing of the decree of the court herein, the said Chicago, Milwaukee & St. Paul Railway Company made and asserted some claim to a part or all of the lands described in complainant's original bill of complaint herein and asked and obtained leave to intervene herein; but your orator avers that the said pretended claim of the said Chicago, Milwaukee & St. Paul Railway Company is without foundation in law or in equity, and the assertion thereof constitutes a cloud upon the title of complainant to the aforesaid lands.

Wherefore this complainant prays as in its original bill of complaint herein; and further prays this court that the said Chicago, Milwaukee & St. Paul Railway Company be made a party defendant herein, and that the title to the lands described in paragraph twenty-one of its said original bill of complaint be established and quieted in complainant as against the adverse claims of the said defendant, The Chicago, Milwaukee and St. Paul Railway Co., and that said def't be forever barred and estopped from having or asserting any title to said premises or any part thereof adverse to complainant, and that your orator have such other and further relief as may seem meet and proper in the premises; and so your orator will ever pray.

And may it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honor-
34 able court, to be directed to the said Chicago, Milwaukee & St. Paul Railway Company, commanding it to appear and answer herein and to abide such order or decree in this cause as shall be agreeable to equity and good conscience.

UNITED STATES OF AMERICA,
By W. H. H. MILLER,
Attorney General.

E. C. HUGHES, *Of Counsel.*

UNITED STATES OF AMERICA, }
Northern District of Iowa, } *ss:*

E. C. Hughes, being duly sworn, deposes and says that he is special counsel for the United States, thereunto duly appointed, to prosecute this action; that he has read the foregoing amendment to the original complaint*ant* herein and knows the contents thereof, and the facts therein stated are true as he verily believes.

E. C. HUGHES.

Subscribed in my presence and sworn to before me this — day of May, 1891.

——— ———.

(Endorsed:) No. 104. Equity. United States *vs.* S. C. & St. P. R. R. Co. *et al.* Amendment to complain*ant*. Filed May 5th, 1891. A. J. Van Duzee, clerk, J. H. Bolton, deputy.

35 *Reply of the United States to the Answer of the Defendant The Chicago, Milwaukee & St. Paul Railway Company.*

In the Circuit Court of the United States for the Northern District of Iowa, Western Division. May Term, 1891.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE SIOUX CITY & ST. PAUL R. R. COMPANY, ELIAS F. DRAKE & Amherst H. Wilder, and the C., M. & St. Paul Railway Company, Defendants.

To the judges of said court:

The United States of America, now and hereafter at all times saving and reserving unto itself all benefits and advantages of any and all exceptions which can or may be had or taken to the many errors, uncertainties, and imperfections in the answer of the defendant The Chicago, Milwaukee & St. Paul Railway Company heretofore filed in this cause and for a reply thereto or unto so much or such parts thereof as are material or necessary for it to make reply unto, says:

That, saving and excepting such parts of said answer as admits any of the allegations of its bill of complaint herein as amended, it denies each and every allegation in said answer contained and avers that the same are not true to the knowledge or belief of this complain-t.

Wherefore complainant prays as in its original and amended complaint herein.

UNITED STATES OF AMERICA,
By W. H. H. MILLER,
Its Attorney General.

E. C. HUGHES, *Of Counsel.*

Endorsed: United States *vs.* S. C. & St. P. R. R. Co. *et al.* Reply to answer of C., M. & St. P. R'y Co. Filed May 5th, 1891. A. J. Van Duzee, clerk, J. H. Bolton, deputy.

36 *Answer of the United States of America to the Amended Cross-bill of the Chicago, Milwaukee & St. Paul Railway Company.*

In the Circuit Court of the United States for the Northern District of Iowa, Western Division, May Term, 1891.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE SIOUX CITY & ST. PAUL RAILROAD COMPANY, ELIAS F. Drake, Amherst H. Wilder, and The Chicago, Milwaukee & St. Paul Railway Co., Defendants.

To the judges of the circuit court of the United States for the northern district of Iowa:

The United States of America, now and at all times hereafter saving and reserving unto itself all benefit and advantage of excep-

tions which can or may be had or taken to the many errors, uncertainties, and other imperfections in the amended cross-bill of the said defendant, The Chicago, Milwaukee & St. Paul Railway Company, for answer thereto or unto so much and such parts thereof as it is advised is or are material or necessary for it to make answer unto, respectfully begs leave to show this honorable court—

That it admits that an act entitled "An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State," approved May 12th, 1864, was enacted by the Congress of the United States, and it avers that a copy of said act is attached, as Exhibit One, to its original bill of complaint herein, and it begs leave to refer to said Exhibit One and make the same a part of its answer herein as fully as if set forth in the body hereof.

That it admits that the legislature of the State of Iowa enacted an act approved on the 3rd day of April, 1866, which is referred to in said cross-bill, a literal copy whereof is attached to the original bill of complaint of the United States herein as Exhibit No. Two, and, for greater particularity as to the matters and things in said act provided, it begs leave to refer to the said Exhibit Two and make the same a part of its answer herein.

That it admits that by an act of the legislature of the State of Iowa approved April 20th, 1866, the said grant of Congress was accepted by the said State of Iowa; a copy of said act of the legislature of the State of Iowa is attached to its original bill of complaint herein as Exhibit No. Three thereof, and it begs leave to refer thereto and make the same a part hereof.

That it further admits that said last-named act was amended by an act of the legislature of the State of Iowa approved on the 24th day of March, 1868, by correcting a clerical error therein, which said last-named act is to its original complaint attached as Exhibit Four, and to which it likewise begs leave to refer and to make the same a part hereof.

That it admits that by an act of the legislature approved February 29th, 1868, the said State of Iowa resumed to itself from said McGregor & Western Railway Company the said land grant and
37 all the rights conferred by the aforesaid act of *act of* Congress upon the said company, a copy of which is hereunto attached, marked "Exhibit A," and made a part hereof.

That it admits that afterwards the legislature of the State of Iowa enacted an act approved March 31st, 1868, making a grant of land to the McGregor & Sioux City Railway Company or, in case of their failure to accept the same, the Forty-third Parallel Company, and to execute the trust conferred by the aforesaid act of Congress, by chapter fifty-eight of the Laws of the Twelfth General Assembly of said State, a copy of which act is hereunto attached, marked "Exhibit B," and made a part hereof.

That as to the matters and things which it is averred in said cross-bill were done and performed by the said McGregor & Sioux City Railway Company it has neither knowledge nor information

sufficient to form a belief, and therefore puts complainant in said cross-bill upon its proof in respect thereto.

That it admits that the legislature of the State of Iowa passed an act entitled "An act in relation to the lands granted to the State of Iowa by act of Congress entitled 'An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State,' approved May 12th, 1864, and to grant to and impose upon the Chicago, Milwaukee & St. Paul Railway Company the powers and liabilites mentioned in chapter four (4), title ten (10), of the Code," approved February 27th, 1878, being chapter twenty-one of the Laws of the Seventeenth General Assembly, a copy of which act is hereunto attached, marked "Exhibit C," and made a part hereof.

That it is informed and believes that the said Chicago, Milwaukee & St. Paul Railway Company completed said railroad from Algona, Iowa, to a point of junction with the Sioux City & St. Paul Railroad Company at or near the town of Sheldon, in the county of O'Brien, but as to whether the same was so completed during the year 1878 it has neither knowledge nor information sufficient to form a belief.

That on the 4th day of March, 1879, a suit was instituted by the Chicago, Milwaukee & St. Paul Railway Company against the Sioux City & St. Paul Railroad Company, A. H. Rice, B. F. Drake, John H. Gear, governor of the State of Iowa, *et al.*, in the circuit court of the United States for the district of Iowa, which being tried and determined in said court upon its merits was appealed to the Supreme Court of the United States, by which court it was determined that the lands lying within the joint place limits of said companies inured by said grant of Congress to said companies in equal undivided moieties; that the lands lying outside of the place and within the indemnity limits of the Chicago, Milwaukee & St. Paul Railway Company, but wholly within the place limits of the Sioux City & St. Paul Railroad Company, passed by said grant to the State of Iowa wholly for the purpose of aiding in the construction of the last-named road, and that the lands lying within the joint indemnity limits of said road, but outside of their respective place limits, likewise inured to said companies in equal undivided moieties, the opinion of said court being reported in volume 117 of the United States Supreme Court Reports, on page 406.

That thereupon the said cause was remanded to the said United States circuit court for the district of Iowa, where such further proceedings were had in conformity with the aforesaid opinion of the Supreme Court of the United States as that a decree was entered therein establishing and determining the rights and interests
38 of the aforesaid railroad companies in and to the lands involved in said controversy and embraced within the joint place and indemnity limits of their respective roads, on the 21st day of May, 1886, a copy of which decree is hereunto attached, marked "Exhibit D," and made a part hereof.

That thereafter, on the 28th day of October, 1886, the said Chicago, Milwaukee & St. Paul Railway Company and the said Sioux

City & St. Paul Railroad Company, each appearing by their respective attorneys and consenting thereto, a decree in partition was entered in said cause segregating and setting apart in severalty the lands embraced in the first-mentioned decree to said companies respectively each their proper and distinct portions thereof, a copy of which decree in partition is hereunto attached, marked "Exhibit E" and made a part hereof.

That by said decree in partition all the lands described in paragraph twenty-one of the original bill of complaint filed by the United States herein were partitioned and set apart in severalty unto the Sioux City and St. Paul Railroad Company.

That neither the United States, the grantor, nor the State of Iowa, the trustee, in the aforesaid grant, was made a party to the said proceedings; but this defendant avers that said proceedings were intended to determine and did determine the rights and interests which might be acquired by each of said companies in the lands embraced in the said grant of Congress of May 12th, 1864, upon compliance with the conditions thereof by said companies respectively, and to segregate and set apart the respective moieties which might be so acquired by each of said companies therein upon due performance of the conditions of said grant.

That the lands set apart to the Chicago, Milwaukee & St. Paul Railway Company in severalty by the aforesaid decree in partition were to set apart to it in lieu of its equal undivided moiety in the whole of the alternate sections undisposed of embraced within the joint place and the joint indemnity limits of the aforesaid railroads; and this defendant to said cross-bill avers that the said Chicago, Milwaukee & St. Paul Railway Company, relying thereon and intending to take said lands in lieu of said equal undivided moiety, took and received all the lands set apart to it by the said decree which had been theretofore patented by the State of Iowa to the said Sioux City & St. Paul Railroad Company and has since sold and conveyed the whole thereof to *bona fide* purchasers for a valuable consideration.

That on the 26th day of July, 1887, L. Q. C. Lamar, as Secretary of the Interior of the United States, upon an adjustment of said grant in pursuance of an act of Congress entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of a railroad, for the forfeiture of unearned lands, and for other purposes," approved March 3rd, 1887, and upon an application filed in said department asking that suit be commenced and prosecuted in the name of the United States against each of the aforesaid companies to assert title to about fifty-five thousand acres of the lands embraced in the aforesaid decree in partition, acquiesced in said proceedings in the United States circuit court for the district of Iowa so far as related to the portion of said lands set apart to the said Chicago, Milwaukee & St. Paul Railway Company, and refused to authorize or institute any proceedings to disturb its title thereto in severalty.

That the said Chicago, Milwaukee & St. Paul Railway Company thereupon made application to the governor of the State of

39 Iowa for patents to all that portion of the said lands set apart by the said decree in partition to it which had not theretofore been certified or patented by the said State of Iowa, and the said State of Iowa, trustee as aforesaid, intending thereby to fully execute its trust under said grant, so far as related to the Chicago, Milwaukee & St. Paul Railway Company, did, on the 27th day of September, 1887, make and deliver to said last-mentioned company patents to all of said last-named lands, which lands the said company did thereupon sell and convey to *bona fide* purchasers for value.

That the aforesaid proceedings had in the circuit court of the United States for the district of Iowa ascertained and determined between the aforesaid railroad companies the portions which might be acquired by said companies respectively upon the performance by either of them of the conditions required by the aforesaid grant of Congress to be by each of said companies performed respectively and segregated and set apart in severalty the lands which might inure to each of said companies upon due performance of the aforesaid conditions, and the United States, the grantor, and the State of Iowa, the trustee, having acquiesced in said proceedings so far as related to the segregating and setting apart of said lands in severalty, and having acted thereon, it was thereby determined what were the particular lands which might be acquired by either of said companies in severalty upon a due performance by it of the conditions of said grant.

That of the lands described in paragraph twenty-one of the original bill of complaint herein the following-described lands lie west of the western terminal limit of the McGregor Western Railroad Company and its successor, the Chicago, Milwaukee & St. Paul Railway Company, and were never embraced within that portion of the aforesaid act of Congress of May 12th, 1864, relating to the road to be constructed by the said last-named companies, to wit:

Description.	Section.	Town.	Range.	Acres.
N e of n w, s w of n e, & n w of s e..	7	97	42	120.00
N w of n e.....	7	96	42	40.00
N w of n w, s e of n w, & s w of n e..	19	96	42	116.17
W h'f of n w, s e of n w, n w of n e, and w h'f of s e.....	7	95	42	230.41
W h'f of s w, s e of s w, & w h'f of s e.	19	95	42	193.49
S e of n w.....	31	95	42	40.00

That of the lands described in the said paragraph twenty-one the following lands lie within the place limits of the located line of the Sioux City & St. Paul Railroad Company and outside of the ten but within twenty mile limit of the located line of the Chicago, Milwaukee & St. Paul Railway Company, and were never em-

braced within that portion of the said grant of Congress relating to said last-named company, to wit:

40 Description.	Section.	Town.	Range.	Acres.
S e of n e and e h'f of s e	7	95	42	120.00
S h'f s h'f of n e and s h'f of n w	9	95	42	480.00
S h'f of n e, s h'f of n w, & s h'f	11	95	42	480.00
All	15	95	42	640.00
All	17	95	42	640.00
E h'f of n e and e h'f of s e	19	95	42	160.00
All	21	95	42	640.00
S h'f, s h'f of n w, & s h'f of n e	7	95	41	451.49

That of the lands described in the said paragraph twenty-one the following-described lands lie within the joint place limits of the Sioux City & St. Paul Railroad Company and the Chicago, Milwaukee & St. Paul Railway Company, but are a portion of the lands set apart by the foresaid decree of the circuit court of the United States for the district of Iowa to the said Sioux City & St. Paul Railroad Company, and thereby became distinguished and set apart in severalty as the lands intended by Congress to pass by the aforesaid grant for the purpose of aiding in the construction of said road from Sioux City, Iowa, to the Minnesota State line, to wit:

Description.	Section.	Town.	Range.	Acres.
All	3	97	42	595.60
All	9	97	42	640.00
All	17	97	42	640.00
E h'f of n e and e h'f of s e	19	97	42	160.00
All	25	97	42	640.00
S h'f	29	97	42	320.00
S e of n e and n e of s e	31	97	42	80.00
S h'f	33	97	42	320.00
All	35	97	42	640.00
All	3	96	42	646.16
S h'f	5	96	42	320.00
E h'f of s e	7	96	42	80.00
All	11	96	42	640.00
All	15	96	42	640.00
W h'f	17	96	42	320.00
All	23	96	42	640.00
All	29	96	42	640.00
E h'f of s e	31	96	42	80.00
All	33	96	42	640.00

Description.	Section.	Town.	Range	Acres.
All	1	95	42	641.36
N h'f s w q'r, n h'f of s e, and s e of s e	5	95	42	590.82
N e of n e	7	95	42	40.00
N q'r	9	95	42	160.00
S w of s w	13	97	41	40.00
E h'f of s w and n e of s e	35	97	41	120.00
N e of n w	3	96	41	39.94
S e of n e	15	96	41	40.00
W h'f	5	95	41	318.64
N q'r	7	95	41	150.51
S w of n w	7	95	40	36.50

That of the lands described in said paragraph twenty-one the following-described lands lie within the joint indemnity limits of the Sioux City & St. Paul Railroad Company and the
41 Chicago, Milwaukee & St. Paul Railway Company and outside of the place limits of each of said companies, but are a portion of the lands set apart by the aforesaid decree in partition of the United States circuit court for the district of Iowa to the Sioux City & St. Paul Railroad Company, having been theretofore selected by the Secretary of the Interior as lieu lands and patented to the State of Iowa for the benefit of said last-named company, and thereby became distinguished and set apart in severalty as a portion of the lands intended by Congress to pass to said last-named company to aid in the construction of the said road from Sioux City to the Minnesota State line, to wit:

Description.	Section.	Town.	Range.	Acres.
All	23	95	42	640.00
All	27	95	42	640.00
S h'f	29	95	42	320.00
E h'f of n e	31	95	42	80.00
S h'f and s h'f of n h'f	11	95	41	480.00
All	13	95	41	640.00
All	15	95	41	640.00
W h'f	19	95	41	288 76
All	23	95	41	640.00
All	25	95	41	640.00
All	27	96	41	640.00
S h'f of n w and s w q'r	9	95	40	240.00
All	15	98	38	640.00
N w q'r	17	98	38	160.00

That the said Chicago, Milwaukee & St. Paul Railway Company, having instituted the aforesaid proceedings in the circuit court of the United States for the district of Iowa, and having procured the aforesaid decrees in said court and acquiesced in and consented thereto, and having in the aforesaid proceedings before the Secretary of the Interior asserted its claim to the lands so set apart to it in severalty by said decree of partition, and having thereupon demanded and received from the State of Iowa, trustee as aforesaid, patents to its portions of lands in severalty, and having sold and conveyed said lands in severalty so set apart to it to *bona fide* purchasers and transferred the title thereto — the United States, answering its said cross-bill, here and now avers that it is estopped to claim any part or portion of the lands set apart under and by virtue of the aforesaid decrees as the lands which might inure in severalty to the Sioux City & St. Paul Railroad Company upon the performance by it of the conditions of the aforesaid grant of Congress relating to said last-named company, and it is further estopped to claim that its grant attached or attaches to the whole or to any part or to a moiety of the whole or any part of said lands.

That it admits that the said Chicago, Milwaukee & St. Paul Railway Company has received under the said grant of Congress four hundred sixty-three thousand three hundred and fifty-five and $\frac{41}{100}$ (463,355.41) acres of land, but denies that there is still due the said company any other or further lands under said grant.

That the United States, under and by virtue of the said grant of Congress, undertook to give, for the purpose of aiding in the construction of an entire line of railroad from McGregor, in the State of Iowa, to a point of intersection in the county of O'Brien with a road to be built from Sioux City to the Minnesota
42 State line, a quantity of lands not to exceed the number of acres embraced in the alternate sections on either side of the located line of said road for ten sections in width, provided such quantity could be found within twenty miles from such located line out of the alternate sections embraced within said grant and not sold, reserved, or otherwise disposed of at the date of the definite location of said road and the selection and withdrawal of said lands, and it avers that the said Chicago, Milwaukee & St. Paul Railway Company has received all of said lands subject to said grant.

That the lands in controversy under this cross-bill are a portion of the lands included within the grant of May 12th, 1864, made to aid in the construction of a railroad from Sioux City to the Minnesota State line and were not included within the grant of Congress made to aid in the construction of the McGregor Western railroad.

That whether the said Sioux City & St. Paul Railroad Company had complied with the conditions of its grant and had earned and become entitled to the aforesaid lands was a question solely between it and the United States, its grantor, and one which the said Chicago, Milwaukee & St. Paul Railway Company has never been entitled to urge or present, and the determination whereof could in

nowise enlarge or diminish the rights or interests of said last-named company; that by the decree of this court filed herein on the 19th day of December, 1890, it was determined that the said Sioux City & St. Paul Railroad Company had failed to perform all the conditions and requirements of said grant on its part and had received the full quantity of lands to which it was entitled under said grant by reason of its partial performance of the conditions thereof, and by said decree the title to said lands was established and quieted in the United States as against said Sioux City & St. Paul Railroad Company; but this defendant avers that said proceeding was not instituted nor the aforesaid decree rendered in the interest or for the benefit of the said Chicago, Milwaukee & St. Paul Railway Company, and the same does not and cannot operate to enlarge the rights of said company under its said grant or to make said grant attach to lands not theretofore subject thereto.

That as to whether the map attached to said cross-bill as Exhibit "A" is a true and correct representation of the matters therein set forth and thereon appearing this defendant has neither knowledge nor information sufficient to form a belief.

That as to whether the lands described in classes one, two, and three, on pages ten and eleven of said cross-bill, are correctly classified and described therein it has neither knowledge nor information sufficient to form a belief, but it avers that all of the lands described in paragraph twenty-one of its original bill of complaint herein have been heretofore in this answer correctly described and classified.

And this defendant denies all the said cross-bill charges; without this, that if there is any other matter, cause, or thing in the said cross-bill contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, avoided, or denied the same is not true to the knowledge or belief of this defendant; all of which matter and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct.

Wherefore this defendant prays that a decree shall be entered herein establishing and confirming its title to all of said lands against the adverse claims of the said Chicago, Milwaukee &
43 St. Paul Railway Company, as prayed in its original and amended bill of complaint herein, and that the said cross-bill be dismissed, and that it have such other and further relief as to this court shall seem meet and proper.

UNITED STATES,
By W. H. H. MILLER,
Its Att'y Gen.

E. C. HUGHES, *Of Counsel.*

UNITED STATES OF AMERICA, }
Northern District of Iowa, } *ss:*

E. C. Hughes, being duly sworn, deposes and says that he is special counsel for the United States thereunto duly appointed to prosecute this action; that he has read the foregoing answer to the cross-bill

of the Chicago, Milwaukee & St. Paul Railway Company, knows the contents thereof, and the facts therein stated are true, as he verily believes.

E. C. HUGHES.

Subscribed in my presence and sworn to before me this 5th day of May, 1891.

[SEAL.]

J. H. BOLTON,
Deputy Clerk U. S. C. C.

EXHIBIT A.

Chapter 16.

An act to resume all the lands and rights conferred upon the McGregor Western Railroad Company by or under an act of Congress approved May 12, 1864.

Whereas, by an act of Congress approved May 12, A. D. 1864, entitled "An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State," certain lands were granted to the State of Iowa for the use and benefit of the McGregor Western Railroad Company for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main street South McGregor in said State in a westerly direction by the most practicable route on or near the forty-third parallel of north latitude until it shall intersect the proposed railroad running from Sioux City to the Minnesota State line in the county of O'Brien in said State of Iowa which said grant was made to and accepted by the State of Iowa upon the conditions restrictions and qualifications therein named and

Whereas, said act of Congress farther provides that in the event of the failure of said McGregor Western Railroad Company to build twenty miles of said road during each and every year from the date of its acceptance of said grant then the State may resume said grant and so dispose of the same as to secure the completion of a road on said line; and

44 Whereas, said McGregor Western Railroad Company has wholly failed to build said railroad as therein required, and to perform the conditions of said grant, and has forfeited all right to the benefits of said grant now therefore,

SECTION 1. Be it enacted by the General Assembly of the State of Iowa, That all lands and all rights to said lands granted or intended to be granted to the McGregor Western Railroad Company by said act, be and the same are hereby absolutely and entirely resumed by the State of Iowa, and that the same be and are as fully and absolutely vested in said State as if the same had never been granted to said railroad company.

SECTION 2. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Iowa State Register and Iowa Statesman newspapers published at Des Moines Iowa.

Approved February 27, 1868.

EXHIBIT B.

Chapter 58.

An act making a grant of land to the McGregor & Sioux City Railway Company or, in case of their failure to accept the same, to the Forty-third Parallel Company, and to execute the trust conferred by act of Congress entitled "An act for a grant of land to the State of Iowa in alternate sections to aid in the construction of a railroad in said State," approved May 12, 1864.

SECTION 1. Be it enacted by the General Assembly of the State of Iowa, That all the lands rights and privileges that are granted to the State of Iowa by an act of Congress approved May 12, 1864, for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main street South McGregor in said State in a westerly direction by the most practicable route on or near the forty-third parallel of north latitude until it shall intersect the proposed railroad running from Sioux City to the Minnesota State line in the county of O'Brien in said State of Iowa, are hereby granted and conferred to and upon the McGregor & Sioux City Railway Company a corporation organized under the laws of the State of Iowa Provided: said railroad company accepting the provisions of this act shall at all times be subject to such rules and regulations and rates of tariff for the transportation of freights and passengers as may from time to time be enacted and provided for by the General Assembly of the State of Iowa, and further subject to the conditions limitations restrictions and provisions contained in this act and in the acts of Congress granting said lands to the State of Iowa:

SECTION 2. This grant is made upon the express conditions that said railway company shall have constructed and in running order a line of railway as required by the provisions of the act of Congress making said grant to the State and of this act upon the most practicable route on or near as practicable to the forty-third parallel of north latitude running within one mile of New Hampton in Chickasaw county and running from thence by way of and within one mile of St. Charles City, Mason City and Algona until it shall intersect in the county of O'Brien in this State the proposed
45 railroad running from Sioux City to the Minnesota State line.

SEC. 3. This grant is conferred on the McGregor & Sioux City Railway Company on the further express conditions that in case said company shall fail to have its railway built and completed in good running order as far west as to Chickasaw in range fourteen in Chickasaw county by the first day of September 1869, or in case said company shall fail to build and complete in good running order at least twenty miles in addition in each and every year thereafter and the whole of said road by the first day of December, 1875; then, and in case of any such failure or failure- to comply with any of *its* conditions of this act the State of Iowa may at any time resume all

rights to the lands hereby granted and which may remain undisposed of to said company on account of road actually built in compliance with the terms of this act; provided, that if in any one year more road shall be built than is required by this act it shall be regarded and treated as road built in the next succeeding year or years.

SEC. 4. This railway shall be constructed upon the usual gauge of other first-class railroads in this State and shall be constructed and finished in a style and of a quality equal to the average of other first-class Western railroads.

SEC. 5. The said company shall be entitled to the benefit of the selections of land already made under the grant to the State of Iowa, of lands to aid in the construction of a railroad from McGregor westward on or near the forty-third paral-el approved May 12th, 1864; and the line located under said grant shall be binding only so far as applicable to said selections.

SEC. 6. It is hereby made the duty of the governor when ten consecutive miles of railroad has been built in accordance with the provisions of this act, to certify that fact to the Secretary of the Interior, and so on for each consecutive ten miles thereof, as the same shall be completed and whenever the said McGregor and Sioux City Railroad Company shall have completed in good running order, according to the provisions of this act its railway to a point within one mile of St. Charles City, in Floyd county it shall be the duty of the governor of this State to cause patents to be issued to said railway company for one hundred and fifty sections of said land and when the said railway company shall in like manner have completed its railway to the east line of range twenty-two in Cerro Gordo county, then the said governor shall cause patents to be issued to said railway company for one hundred and fifty sections of land; and when the said railway company shall in like manner have completed its railway to a point within one mile of Algona in Kossuth county then the governor shall cause patents to be issued to said company for one hundred and fifty sections more of said lands; and when the said railway company shall in like manner have completed its railway to the Little Sioux river then the said governor shall cause patents to be issued to said company for all the balance of the lands granted for that purpose; provided that the said railway company shall not convey or encumber any of said lands prior to the time it shall be entitled to patents therefor, as provided in this act; and this act shall not be so construed as to grant to said railway company or any person or persons whomsoever any of said lands for any railroad heretofore built.

46 SECTION 7. All lands embraced in said grant which were entered prior to January 1, 1866 under the homestead laws of the United States shall be patented by the governor of this State to the parties by whom the same were so entered or to their heirs or grantees upon the payment by them into the State treasury within two years from the passage of this act of the price of such lands as homesteads under the laws of the United States; and the money so paid for such lands shall be held for and paid over to

said railway company when such lands would have been earned by said company by an extension of said road as required in this act.

SECTION 8. It is further expressly provided that if said McGregor and Sioux City Railway Company shall fail or refuse to accept of this grant upon the conditions hereby imposed and in time and manner as herein required the Forty-third Parallel Railway Company may accept the grant within sixty days thereafter and shall thereby become substituted to all the rights and subject to all the conditions hereinbefore mentioned to the same extent as if said Forty-third Parallel Railway Company had been mentioned in this act in the place of the McGregor and Sioux City Railroad (way) Company, wherever the same occurs therein.

SEC. 9. The said McGregor and Sioux City Railway Company shall assent to and accept the provisions of this act by a written instrument under the seal of such corporations with the signatures of the proper officers within sixty days after the passage of this act; which said acceptance shall be filed in the office of the secretary of state and be by him recorded in the book by him kept for the recording of articles of association. And, as a further condition of this grant and at the time of the acceptance hereinbefore required and as a part thereof the said McGregor and Sioux City Railway Company shall procure and file with the secretary of state a full absolute legal and effectual waiver release and surrender of all claim right or interest or pretended claim right or interest of the McGregor Western Railroad (way) Company its successors or assigns in or to any of the lands granted to this State by act of Congress approved May 12, 1864, which claim right or interest arises out of or is on account of any railroad already constructed provided that if the Congress of the United States shall make any additional grant of land to the State of Iowa to aid in the construction of a railroad from McGregor or any intermediate point to a point in O'Brien county and the said McGregor and Sioux City Railway Company their successors or assigns shall comply with all the provisions of this act and shall construct their railroad to O'Brien county in the manner and time as provided in this act then this release shall not operate to deprive said last-named company their successors or assigns of land in said contemplated additional grant for any railroad constructed on said line between McGregor and O'Brien county.

SEC. 10. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Daily State Register and Iowa Evening Statesman.

Approved March 31, 1868.

47 EXHIBIT C.

Chapter 21.

An act in relation to the lands granted to the State of Iowa by act of Congress entitled "An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State," approved May 12th, 1864, and to grant to and impose upon the Chicago, Milwaukee and St. Paul Railway Company the powers and liabilities mentioned in chapter four (4), title — (10), of the code.

Whereas, the McGregor and Sioux City Railway Company now known as the McGregor and Missouri River Railway Company has failed to comply with the provisions of the act of the Twelfth General Assembly of the State of Iowa, approved March 31, 1868, entitled "An act making a grant of land to the McGregor and Sioux City Railway Company:" Therefore,

Be it enacted by the General Assembly of the State of Iowa

SEC. 1. That all lands or rights to lands heretofore granted to the McGregor and Sioux City Railway Company be and the same are hereby absolutely and entirely resumed by the State of Iowa.

SEC. 2. That all lands and rights to lands whether in severalty jointly or in common and including all lands or rights to lands or any interest therein or claims thereto whether certified or not, embraced within the overlapping or conflicting limits of the two grants or roads made and described by the act of Congress hereinafter designated granted to the State of Iowa to aid in the construction of a railroad from a point at or near the foot of Main street South McGregor in said State in a westerly direction by the most practicable route on or near the forty-third parallel of north latitude until it shall intersect in the county of O'Brien a railroad running from Sioux City Iowa, to the Minnesota State line, by act of Congress approved May 12, 1864, and entitled "An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State," be and the same are hereby granted to and conferred upon the Chicago Milwaukee & St. Paul Railway Company which company now owns and operates the said railroad from McGregor to Algona upon the following express terms and conditions viz: that the last-named company shall in extension of its present line of road from McGregor to Algona build and construct its road from Algona in Kossuth county, to Emmetsburg in Palo Alto county, and locate and establish its depot upon the grounds selected by the McGregor & Missouri River Railway Company as shown by the town plat of Emmetsburg thence to Spencer in Clay county and locate and establish its depot upon section seven (7) township — (96) range — (36) on or before the first day of January 1879 thence on the most direct and practicable route to a point of connection with the Sioux City & St. Paul railroad within one-half mile of the corporate limits of Sheldon in O'Brien county on or before the first day of January 1880.

SEC. 3. When the said railroad shall have been built and constructed to Spencer in Clay county then and thereupon the governor of the State shall patent and transfer to the Chicago,
48 Milwaukee & St. Paul Railway Company all lands and *and* rights to lands and all interest of claims therein mentioned in section two (2) of this act and lying east of said point and coterminus with the completed portion of said road and when said railroad shall have been built and constructed to the point of connection with the Sioux City & St. Paul railroad, then and thereupon the governor of this State shall patent and transfer to said Chicago Milwaukee & St. Paul Railway Company all the remaining lands belonging to or embraced in said grant appertaining to their line of railroad including all or any part or moiety of the lands in said overlapping limits which by the terms of said act of Congress appertain to their line of road; provided, that within twenty days from the passage of this act, the said Chicago Milwaukee & St. Paul Railway Company shall file with the secretary of state a bond to be approved by the governor in the penal sum of two hundred thousand dollars, conditioned for the faithful performance on its part of all the provisions and conditions of this act which sum is agreed upon as liquidated damages for the failure of said company to comply with the conditions of said act.

SEC. 4. All the rights powers and liabilities mentioned and provided in chapter — (4) title ten (10) of the code are hereby granted to and imposed upon the said Chicago Milwaukee & St. Paul Railway Company.

SEC. 5. Should the said Chicago Milwaukee & St. Paul Railway Company fail to file the bond or acceptance mentioned in section three (3) of this act within the time prescribed or fail to build and construct its road in accordance with the conditions or any of them set out in section 2 of this act then and thereupon all lands and rights by this act conferred shall revert to the State of Iowa.

SEC. 6. The said railroad shall be built upon and subject to all the terms and conditions named in the act of 1868 approved March 31, 1868, granting said lands to the McGregor & Sioux City Railway Company, save as such terms and conditions are echanged by this act or are inapplicable. And said railroad company accepting the provisions of this act its lessees or assigns shall at all times be subject to such rules regulations and rates of tariff for the transportation of freights and passengers as may from time to time be enacted and provided for by the General Assembly of the State of Iowa.

SEC. 7. In case the Chicago Milwaukee & St. Paul Railway Company shall fail to file the bond or acceptance provided for in section three of this act, within the time prescribed, then any other railroad company first filing with the secretary of state the bond aforesaid may be by the advice and consent of the executive council, substituted to all the rights and subject to all the provisions and conditions of this act conferred upon or made with reference to the Chicago Milwaukee & St. Paul Railway Company in which case the

acceptance provided for in section 3 of this act must be filed with the bond aforesaid.

SEC. 8. The acceptance of the provisions of this act shall be deemed a release by the company accepting the same of all claims to unpatented lands selected for and belonging to the original grant, which have been entered and occupied in good faith pursuant to the provisions of the pre-emption or homestead laws of the United States; and upon the making of the final proof of the occupation and
49 improvement now required by law and of good faith as aforesaid, to the satisfaction of the register of the State land office, the governor is hereby authorized to execute patents for such lands to persons entitled thereto; and also all lands embraced in said grant which have been patented by the governor of the State, under the provisions of section 7, of chapter 58, of the laws of the Twelfth General Assembly; and said lands so patented are hereby expressly reserved from the operation of this act and the title of said patentees, and their assigns, to the lands so patented *are* hereby ratified and confirmed.

SEC. 9. If it shall be found that the Sioux City & St. Paul Railroad Company has constructed its road over any portion of the lands granted by this act, so much land as may be now used and appropriated for right of way and fencing at cuts for protection against snow as may be reasonably necessary not exceeding in width one hundred feet except at cuts and in such case not exceeding two hundred feet in width is hereby granted to said Sioux City & St. Paul Railroad Company and expressly excepted from the grant to said Chicago Milwaukee & St. Paul Railway Company and if it shall be found that section thirteen, town. (township) ninety-nine range forty-two or any part or interest therein shall be embraced within the limits of lands granted by this act to the Chicago Milwaukee & St. Paul Railway Company, said section being heretofore certified by the State to the Sioux City & St. Paul Railroad Company as inuring to it as a part of its land grant and said last-named company having erected thereon valuable side tracks depots grain elevators hotel and other improvements and having platted a town or village thereon, sold and donated lots and dedicated streets and parks for public uses, said section is reserved and excepted from this grant to said Chicago Milwaukee & St. Paul Railway Company and the title thereto is hereby confirmed to the said Sioux City & St. Paul Railroad Company on condition that said company shall execute a valid conveyance to the State of Iowa in trust for said Chicago Milwaukee & St. Paul Railway Company or other grantee of the State as the governor may direct, of an equal quantity of equal quality of land owned by said Sioux City & St. Paul Company as would have inured to the Chicago Milwaukee & St. Paul Railway Company by said section thirteen said selection and conveyance to be approved by the governor.

The provisions of this section are hereby declared to be express conditions of the grants made by this act.

SEC. 10. This act, being deemed of immediate importance shall take effect and be in force on and after its publication in the Iowa

State Register, and Iowa State Leader, newspapers published at Des Moines, Iowa.

Approved February 27, 1878.

50 EXHIBIT D.

Decree of the Circuit Court.

Circuit Court of the United States, District of Iowa, May Term, 1886, Hon. James M. Love, Presiding.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
vs.
SIOUX CITY & ST. PAUL RAILROAD COMPANY, Alexander H. Rice and Elias F. Drake, Trustees; John H. L. Gear, Governor, and James K. Powers, Register of the State Land Office, of the State of Iowa.

No. 1481. Equity. Decree.

FRIDAY, *May* 21, 1886.

This case came on to be further heard on the pleadings and proofs and the mandate and decision of the Supreme Court of the United States, John W. Cary appearing as counsel for the complainant and J. H. Swan as counsel for the defendants; and after hearing counsel and the said pleadings, proofs, mandates, and opinion of the Supreme Court having been duly considered, and it appearing to the said court that the said complainant had fully complied with all the conditions of the act of Congress approved May 12, 1864, granting lands to the State of Iowa to aid in the construction of a railroad from the foot of Main street, South McGregor, in the State of Iowa, in a westerly direction by the most practicable route on or near the forty-third parallel of north latitude until it should intersect he road running from Sioux City to the Minnesota State line, in the county of O'Brien, in said State, and with the act of the legislature of the State of Iowa approved February 27, 1878, conferring said grant upon the complainant, and had fully completed said railroad within the time specified in said act of Congress and said act of the legislature and is entitled to receive all the lands contained in said grant not heretofore granted by the State of Iowa; and it further appearing to said court that the said defendant, Sioux City & St. Paul Railroad Company, has fully complied with all the conditions of said act of Congress approved May 12, 1864, granting certain lands in the State of Iowa to aid in the construction of a railroad from Sioux City, in said State, to the South line of the State of Minnesota at such point as the State of Iowa might select between the Big Sioux and the West fork of the Des Moines river, and with the act of the legisiature conferring said grant upon the said Sioux City & St. Paul Railroad Company, and had fully completed said railroad within the time specified in the said act of Congress and the said act of the legislature from the said State line of the State

of Minnesota in a southerly direction to Le Mars, in said State of Iowa, a distance of fifty-six and $\frac{25}{100}$ miles, and that it is entitled to receive all the lands applicable to said grant from said State line of the State of Minnesota to said Le Mars to the extent of ten sections per mile of road completed;

And it further appearing to said court that the following-described pieces and parcels of land, marked class No. one (1), to wit:

51 Class No. One (1).

Lands Within the Joint Ten-mile Limits of Both Companies.

Description.	Section.	Town.	Range.	Acres.
Patented s h'f	9	98	40	320.00
Patented all	29	98	40	640.00
Patented s w q'r	31	99	40	137.88
Patented s w *a*'r and s h'f of n w q'r	33	99	40	240.00
Patented s e q'r of n w q'r	7	96	41	40.00
Patented n h'f n w q'r and n h'*d* of s e q'r	27	98	41	560.00
Patented s h'f of s e q'r	3	95	42	80.00
Patented all	3	98	40	641.98
Patented all	5	98	40	640.98
Patented all	7	98	40	601.82
Patented all	11	98	40	640.00
Patented all	17	98	40	640.00
Patented all	19	98	40	613.60
Patented all	21	98	40	640.00
Patented all	31	98	40	625.28
Patented s e q'r, s h'f of n e q'r, and s h'f of n w q'r	31	99	40	308.90
Patented s e q'r and s h'f of n e q'r	33	99	40	240.00
Patented all	1	98	41	639.00
Patented all	3	98	41	646.84
Patented all	5	98	41	654.42
Patented all	7	98	41	612.42
Patented all	9	98	41	640.00
Patented all	11	98	41	640.00
Patented all	13	98	41	640.00
Patented all	15	98	41	640.00
Patented all	17	98	41	640.00
Patented all	19	98	41	612.00
Patented all	21	98	41	640.00
Patented all	23	98	41	640.00
Patented all	25	98	41	640.00
Patented s h'f of s e q'r	27	98	41	80.00
Patented all	29	98	41	640.00
Patented all	31	98	41	635.26

Class No. One—Continued.

Description.	Section.	Town.	Range.	Acres.
Patented all	33	98	41	640.00
Patented all	35	98	41	640.00
Patented s h'f, s h'f of n h'f	31	99	41	472.19
Patented s h'f, s h'f of n h'f	33	99	41	480.00
Patented s h'f, s h'f of n h'f	35	99	41	480.00
Patented all	1	98	42	662.18
Patented all	3	98	42	665.74
Patented all	5	98	42	669.72
Patented e h'f of e h'f	7	98	42	160.00
Patented all	9	98	42	640.00
Patented all	13	98	42	640.00
Patented all	17	98	42	640.00
Patented e h'f of e h'f	19	98	42	160.00
Patented all	21	98	42	640.00
Patented all	23	98	42	640.00
Patented all	25	98	42	640.00
Patented e h'f	27	98	42	320.00
Patented n h'f	29	98	42	320.00
52 Patented e h'f of e h'f	31	98	42	160.00
Patented all	33	98	42	640.00
Patented all	35	98	42	640.00
Patented e h'f of s e q'r and s e q'r of n e q'r	31	99	42	120.00
Patented s h'f and s h'f of n h'f	33	99	42	480.00
Patented s h'f and s h'f of n h'f	35	99	42	480.00
S w q'r of n w q'r	7	97	40	36.50
All	5	95	41	638.32
N h'f of n h'f	7	95	41	150.52
N e q'r of n w q'r	3	96	41	39.94
N e q'r of n w q'r	7	96	41	40.00
S e q'r of n e q'r	15	96	41	40.00
N e q'r of s w q'r	17	96	41	40.00
N w q'r of n e q'r	5	97	41	35.48
N e q'r of s w q'r	11	97	41	40.00
S w q'r of s w q'r	13	97	41	40.00
N w q'r of n w q'r	17	97	41	40.00
N w q'r of s w q'r	19	97	41	40.71
N e q'r of s e q'r & e h'f of s w q'r	35	97	41	120.00
All	1	95	42	642.26
N h'f s w q'r, n h'f of s e q'r	3	95	42	549.60
(1) s w q'r of s e q'r, balance all	5	95	42	630.82
N e q'r of n e q'r	7	95	42	40.00
N h'f of n h'f	9	95	42	160.00
N h'f of n h'f	11	95	42	160.00
All	1	96	42	641.96

Class No. One—Continued.

Description.	Section.	Town.	Range.	Acres.
All	3	96	42	646.16
All	5	96	42	654.94
E h'f of e h'f	7	96	42	160.00
All	9	96	42	640.00
All	11	96	42	640.00
All	13	96	42	640.00
All	15	96	42	640.00
All	17	96	42	640.00
E h'f of e h'f	19	96	42	160.00
All	21	96	42	640.00
All	23	96	42	640.00
All	25	96	42	640.00
All	27	96	42	640.00
All	29	96	42	640.00
E h'f of e h'f	31	96	42	160.00
All	33	96	42	640.00

NOTE.—S. W. of S. E., 5, 95, 42, not in grant. It is the section without said 40 acres, and the quantity is 590.82 acres.

Description.	Section.	Town.	Range.	Acres.
All	35	96	42	640.00
All	1	97	42	607.20
All	3	97	42	595.60
All	5	97	42	590.40
E h'f of e h'f	7	97	42	160.00
All	9	97	42	640.00
All	13	97	42	640.00
All	17	97	42	640.00
E h'f of e h'f	19	97	42	160.00
All	23	97	42	640.00
All	25	97	42	640.00
All	27	97	42	640.00
S h'f	29	97	42	320.00
E h'f of e h'f	31	97	42	160.00
All	33	97	42	640.00
All	35	97	42	640.00
				50,580.62

are a part and portion of the grants so made by said act of Congress and are within the overlapping limits of said grants and are all situated within the granted limits—that is, within ten miles of the definitely located line of each of said railroads—and that said companies are jointly entitled to said lands, and that patents therefor should have been issued by the State of Iowa to the said companies jointly for all of said lands, but that by mistake all of said lands above marked as "patented" have been erroneously and wrongfully patented by the State solely to the defendant Sioux City & St. Paul Railroad Company, and that an undivided one-half interest in the lands so patented should be released by said defendant, Sioux City & St. Paul Railroad Company, to said complainant, and that the balance of said lands not patented by the State should be patented to said complainant and said defendant, Sioux City & St. Paul Railroad Company, jointly;

And it further appearing that the following-described lands, marked "class No. 2," to wit:

Class No. Two (2).

Lands Within the Ten-mile Limits of the C., M. & St. P. R'y, but Outside the Ten-mile Limits of the S. C. & St. P. R'y.

Description.	Section.	Town.	Range.	Acres.
Patented all	7	98	39	599.32
Patented all	9	98	39	640.00
Patented all	13	98	39	640.00
Patented all	15	98	39	640.00
Patented all	23	98	39	640.00
Patented all	25	98	39	640.00
Patented all	27	98	39	640.00
Patented all	31	98	39	602.92
Patented all	33	98	39	640.00
Patented s w q'r	33	99	39	160.00
Patented all	25	98	40	640.00
Patented all	27	98	40	640.00
Patented all	33	98	40	640.00
Patented all	35	98	40	640.00
Patented all	3	98	39	643.12
Patented n h'f and s e q'r	5	98	39	482.66
Patented all	11	98	39	640.00
Patented w h'f	19	98	39	280.68
Patented e h'f	21	98	39	320.00
Patented s h'f and s h'f of n h'f	31	99	39	446.93
Patented s e q'r	33	99	39	160.00
Patented all	1	98	40	643.20
Patented n h'f	13	98	40	320.00
Patented s h'f	23	98	40	320.00

Class No. Two—Continued.

Description.	Section.	Town.	Range.	Acres.
54 S h'f	17	98	38	320.00
All	19	98	38	636.68
S h'f	21	98	38	320.00
All	29	98	38	640.00
All	31	98	38	638.76
W h'f of s w q'r	7	96	39	62.25
N e q'r of n e q'r	7	97	39	40.00
All	1	95	40	698.22
All	3	95	40	675.28
All (n h'f contracted for poor farm)	5	95	40	651.60
N h'f of n h'f	7	95	40	161.22
E h'f and n h'f of n w q'r	9	95	40	400.00
All	11	95	40	640.00
All	13	95	40	640.00
E h'f	15	95	40	320.00
E h'f	23	95	40	320.00
All	1	96	40	599.88
All	3	96	40	612.00
All	5	96	40	626.24
All	7	96	40	635.08
All	9	96	40	640.00
All	11	96	40	640.00
All	13	96	40	640.00
All	15	96	40	640.00
All	17	96	40	640.00
All	19	96	40	636.48
All	21	96	40	640.00
All	23	96	40	640.00
All	25	96	40	640.00
All	27	96	40	640.00
All	29	96	40	640.00
All	31	96	40	641.82
All	33	96	40	640.00
All	35	96	40	640.00
N h'f of n e q'r	1	97	40	61.44
S w q'r of s w q'r & s e q'r of s e q'r.	21	97	40	80.00
N e q'r	25	97	40	160.00
N w q'r of n w q'r	35	97	40	40.00
All	1	95	41	638.82
All	3	95	41	641.48
N h'f of n h'f	11	95	41	160.00
N w q'r of n e q'r	25	97	41	40.00
				33,076.28

are a part and portion of said grants so made by said act of Congress to aid in the construction of a railroad from the foot of Main street, South McGregor, in the State of Iowa, in a westerly direction by the most practicable route on or near the forty-third parallel of north latitude until it should intersetc the road running from Sioux City to the Minnesota State line, in the county of O'Brien, in said State, and are situated wholly within the granted limits—that is, within ten miles of the definitely located line—of said complainant and not within the granted limits or within ten miles of the located line of the said defendant, Sioux City & St. Paul Railroad Company, and that the complainant is entitled thereto, and that patents should have been issued therefore to said complainant, but that by mistake all of said lands of said class 2 marked "patented" have been erroneously and wrongfully patented to the defendant Sioux City & Sy. Paul Railroad Company, and that said last-named company should release said lands to said complainant, and that all the rest and residue of said lands of said class 2 not marked as
55 patented should be patented to the said complainant by said State of Iowa;

And it further appearing to said court that the following-described lands, marked "class No. three (3)," to wit:

Class No. Three (3).

Lands Within the Ten-mile Limits of the S. C. & St. P. R'y, but Outside the Ten-mile Limits of the C., M. & St. P. R'y.

Description.	Section.	Town.	Range.	Acres.
Patented e h'f, s w q'r, & e h'f of n w q'r	5	99	39	592.23
Patented all	7	99	39	596.76
Patented w h'f	9	99	39	320.00
Patented all	17	99	39	640.00
Patented all	19	99	39	594.00
Patented s h'f	9	100	39	214.10
Patented all	15	100	39	640.00
Patented e h'f	17	100	39	320.00
Patented s e q'r	19	100	39	160.00
Patented s e q'r, s h'f of n e q'r, and n h'f of n w q'r	29	100	39	320.00
Patented s w q'r of n e q'r & lots No. 1 and 2	31	100	39	107.60
Patented e h'f, s w q'r, & e h'f of n w q'r	33	100	39	550.65
Patented all	29	99	40	640.00
Patented n h'f of nw q'r	33	99	40	80.00
Patented all frac	7	100	40	387.39
Patented all	9	100	40	442.16

Class No. Three—Continued.

Description.	Section.	Town.	Range.	Acres.
Patented lots 1, 2, 3, 4, 8, and 9	11	100	40	239.72
Patented s e q'r	13	100	40	160.00
Patented n w q'r	15	100	40	160.00
Patented n h'f and s e q'r.....	17	100	40	480.00
Patented n h'f, s e q'r, n h'f of n w q'r.	19	100	40	534.58
Patented n w q'r	21	100	40	160.00
Patented w h'f	27	100	40	320.00
Patented s e q'r	29	100	40	160.00
Patented e h'f s w q'r, w h'f of n w..	31	100	40	535.20
Patented e h'f.....	33	100	40	320.00
E h'f and s h'f of n h'f	7	95	41	451.49
E h'f of s e q'r, s e q'r of n e q'r	7	95	42	120.00
S h'f and s h'f of n h'f	9	95	42	480.00
S h'f and s h'f of n h'f	11	95	22	480.00
All	15	95	42	640.00
All	17	95	42	640.00
E h'f of e h'f....	19	95	42	160.00
All	21	95	42	640.00
Patented w h'f of n w q'r.....	5	99	39	89.81
Patented e h'f.....	9	99	39	320.00
Patented s h'f frac.....	7	100	39	283.22
Patented w h'f	17	100	39	320.00
Patented n h'f and s w q'r.....	19	100	39	425.28
Patented all	21	100	39	640.00
Patented all	27	100	39	640.00
Patented n h'f of n e q'r, s h'f of n w q'r, and s q'r.....	29	100	39	320.00
Patented s fr h'f, e h'f of n e q'r, and n w q'r of n e q'r.....	31	100	39	397.77
Patented w h'f of n w (and right of way).....	33	100	39	89.35
56 All	1	99	40	675.96
Patented all	3	99	40	667.14
Patented all	5	99	40	656.34
Patented all	7	99	40	608.20
Patented all	11	99	40	640.00
Patented all	13	99	40	640.00
Patented all	17	99	40	640.00
Patented all	19	99	40	601.36
Patented all	21	99	40	640.00
Patented all	27	99	40	640.00
Patented n h'f of n h'f	31	99	40	148.74
Patented n h'f of n e.....	33	99	40	80.00
Patented lots 5, 6, 7, 10, 11, and 12..	11	100	40	240.00
Patented n h'f and s w q'r.....	13	100	40	480.00

Class No. Three—Continued.

	Description.	Section.	Town.	Range.	Acres.
	Patented e h'f and s w	15	100	40	480.00
	Patented s w q'r	17	100	40	160.00
	Patented s h'f of s w q'r	19	100	40	72.14
	Patented e h'f and s w q'r	21	100	40	480.00
	Patented all	23	100	40	640.00
	Patented all	25	100	40	640.00
	Patented e h'f	27	100	40	320.00
	Patented n h'f and s w q'r	29	100	40	480.00
	Patented e h'f of n w q'r	31	100	40	80.00
	Patented w h'f	33	100	40	320.00
	Patented all	35	100	40	640.00
	Patented all	1	99	41	641.60
	Patented all	3	99	41	633.28
	Patented all	5	99	41	621.36
	Patented all	7	99	41	611.76
	Patented all	9	99	41	640.00
	Patented all	11	99	41	640.00
	Patented all	13	99	41	640.00
	Patented all	15	99	41	640.00
	Patented all	17	99	41	640.00
	Patented all	19	99	41	619.20
	Patented all	21	99	41	640.00
	Patented all	23	99	41	640.00
	Patented all	25	99	41	640.00
	Patented all	27	99	41	640.00
	Patented all	29	99	41	640.00
	Patented n h'f of n h'f	31	99	41	156.49
	Patented n h'f of n h'f	33	99	41	160.00
	Patented n h'f of n h'f	35	99	41	160.00
	Patented all fr	7	100	41	384.14
	Patented all fr	9	100	41	407.60
	Patented all fr	11	100	41	406.72
	Patented all	13	100	41	640.00
	Patented all	15	100	41	640.00
	Patented all	17	100	41	640.00
	Patented all	19	100	41	598.60
	Patented all	21	100	41	640.00
	Patented all	23	100	41	640.00
	Patented all	25	100	40	640.00
	Patented all	27	100	41	640.00
	Patented all	29	100	41	640.00
57	Patented all	31	100	41	607.16
	Patented all	33	100	41	640.00
	Patented all	35	100	41	640.00
	Patented all	1	99	42	619.72

Class No. Three—Continued.

Description.	Section.	Town.	Range.	Acres.
Patented all	3	99	42	628.48
Patented all	5	99	42	638.42
Patented e h'f of e h'f	7	99	42	160.00
Patented all	9	99	42	640.00
Patented all	11	99	42	640.00
Patented all	13	99	42	640.00
Patented all	15	99	42	640.00
Patented all	17	99	42	640.00
Patented e h'f of e h'f	19	99	42	160.00
Patented all	21	99	42	640.00
Patented all 23	23	99	42	640.00
Patented all	25	99	42	640.00
Patented all	27	99	42	640.00
Patented all	29	99	42	640.00
Patented ne q'r of ne q'r	31	99	42	40.00
Patented n h'f of n h'f	33	99	42	160.00
Patented n h'f of n h'f	35	99	42	160.00
Patented all fr	9	100	42	410.66
Patented all fr	11	100	42	409.78
Patented all	13	100	42	640.00
Patented all	15	100	42	640.00
Patented all	17	100	42	640.00
Patented e h'f of e h'f	19	100	42	160.00
Patented all	21	100	42	640.00
Patented all	23	100	42	640.00
Patented all	25	100	42	640.00
Patented all	27	100	42	640.00
Patented all	29	100	42	640.00
Patented e h'f of e h'f	31	100	42	160.00
Patented all	33	100	42	640.00
Patented all	35	100	42	640.00
				63,796.16

are a part and portion of the grant made by the act of Congress to aid in the construction of a railroad from Sioux City to the State line and are situated within the granted limits—that is within ten miles of the definitely located line—of said defendant, Sioux City & St. Paul Railroad Company, and not within the granted limits or within ten miles of the located line of said complainant, and that said Sioux City & St. Paul Railroad Company is entitled thereto, and that all of said lands in said class 3 marked "patented" have been patented by the State of Iowa to said defendant company, and that said defendant company is entitled to a patent for all the residue of said lands contained in said class 3;

And it further appearing to said court that the following-described lands, marked "class No. four (4)," to wit:

Class No. Four (4).

Joint Indemnity Lands.

Description.	Section.	Town.	Range.	Acres.
All	25	95	42	640.00
58 All	27	95	42	640.00
All	29	95	42	640.00
E h'f of n e q'r	31	95	42	80.00
Patented all	3	98	38	640.00
Patented all	5	98	38	641.56
Patented n e q'r of n w q'r	7	98	38	40.00
Patented all	9	98	38	640.00
Patented all	11	98	38	640.00
Patented s h'f, n e q'r of n w q'r, s h'f of n w q'r, s w q'r of n e q'r	7	99	37	477.64
Patented n w q'r of n e q'r, n w q'r of n w q'r, s h'f of n h'f, & s h'f	19	99	37	532.52
Patented s h'f	31	100	37	317.17
Patented all	1	99	38	683.78
Patented e h'f, w h'f of n w q'r, n h'f of s w q'r	3	99	38	513.78
Patented s e q'r of n e q'r, n w q'r of n e q'r, and s e q'r	5	99	38	253.21
Patented all	9	99	38	640.00
Patented n e q'r, s w q'r, n h'f of n w q'r, n h'f of s e q'r, & s w q'r of s e q'r	11	99	38	520.00
Patented n e q'r, s h'f, e h'f of n w q'r, s w q'r of n w q'r	13	99	38	600.00
Patented all	15	99	38	640.00
S e q'r of n e q'r, n w q'r of n w q'r, s w q'r, s h'f of n w, n w q'r of s e q'r, & s h'f of s e q'r	7	98	38	427.42
All	15	98	38	640.00
N h'f	17	98	38	320.00
S w q'r of n e q'r & n w q'r	21	98	38	200.00
S h'f and s h'f of n h'f	7	95	40	483.96
S h'f of n w q'r & s w q'r	9	95	40	240.00
W h'f	15	95	40	320.00
All	17	95	40	640.00
All	19	95	40	651.52
All	21	95	40	640.00
W h'f	23	95	40	320.00
All	27	95	40	640.00

Class No. Four—Continued.

Description.	Section.	Town.	Range.	Acres.
All	29	95	40	640.00
S h'f and s h'f of n h'f	11	95	41	480.00
All	13	95	41	640.00
All	15	95	41	640.00
W h'f	19	95	41	288.76
All	23	95	41	640.00
All	25	95	41	640.00
All	27	95	41	640.00
All	13	95	42	640.00
All	23	95	42	640.00
Patented s h'f	19	99	38	311.35
Patented n h'f, n h'f of s w q'r, s e q'r of s w q'r	21	99	38	440.00
Patented n h'f, s w q'r, n h'f of s e q'r, s e q'r of s e q'r	23	99	38	600.00
Patented all	25	99	38	640.00
Patented n h'f	27	99	38	320.00
Patented nw q'r of n e q'r, w h'f of w h'f	29	99	38	200.00
Patented n h'f, s e q'r, n h'f of s w q'r	31	99	38	548.21
59 Patented e h'f and s w q'r	33	99	38	480.00
Patented n h'f s w q'r, s w q'r of s e q'r (less 1 acre)	35	99	38	519.00
Patented n e q'r, w h'f of n w q'r, n e q'r of n w q'r	19	100	38	261.58
Patented all	1	98	39	643.16
Patented w h'f and s e q'r	1	99	39	506.25
Patented s e q'r	11	99	39	160.00
Patented n w q'r	21	99	39	160.00
Patented all	23	99	39	640.00
Patented all	29	99	39	640.00
Patented n h'f of n h'f	31	99	39	148.79
Patented all	35	99	39	640.00
Patented all	23	100	39	640.00
Patented n w q'r and s w q'r (less right of way)	25	100	39	313.75
Patented w h'f	5	99	38	346.36
Patented all	7	99	38	612.72
Patented all	17	99	38	640.00
Patented n h'f	19	99	38	310.91
Patented s e q'r	21	99	38	160.00
Patented s h'f	27	99	38	320.00
Patented s e q'r & s e q'r of n e	29	99	38	200.00
Patented n w q'r	33	99	38	160.00

Class No. Four—Continued.

Description.	Section.	Town.	Range.	Acres.
Patented school lot in	35	99	38	1.00
Patented s w q'r	17	100	38	160.00
Patented s h'f	19	100	38	304.74
Patented s h'f	21	100	38	320.00
Patented e h'f, e h'f of w h'f, s w q'r of n w q'r	27	100	38	520.00
Patented all	29	100	38	578.75
Patented all	31	100	38	609.32
Patented all	33	100	38	236.80
Patented n h'f s e q'r, n h'f of s w q'r, and s w q'r of s w q'r	35	100	38	600.00
Patented n e q'r	1	99	39	186.39
Patented all	3	99	39	689.52
Patented w h'f and n e q'r	11	99	39	480.00
Patented all	13	99	39	640.00
Patented all	15	99	39	640.00
Patented e h'f and s w q'r	21	99	39	480.00
Patented all	25	99	39	640.00
Patented all	27	99	39	640.00
Patented n h'f	33	99	39	320.00
Patented s h'f	13	100	39	320.00
Patented n e q'r, s w q'r, right of way in s e q'r of s e q'r	25	100	39	326.25
Patented all	35	100	39	640.00
Patented e h'f of e h'f	7	100	42	102.26
				42,188.93

60 are a part and portion of said grants so made by said act of Congress and are within the overlapping limits of said grants and are situated wholly within the indemnity limits of both of said railroads and not within the granted or ten-mile limits of either, and that said lands belong to said companies jointly and should have been so patented to them, but that by mistake all of said lands marked "patented" have been erroneously and wrongfully patented solely to the defendant Sioux City & St. Paul Railroad Company, and that an undivided one-half interest in the lands of class No. 4 so patented should be released by the said Sioux City & St. Paul Railroad Company to said complainant, and that the balance of said lands in said class No. 4 should be patented by the State of Iowa to saidcompanies jointly;

And it further appearing to said court that a portion of the lands of classes nombered 1, 2, and 4, so as aforesaid patented to the Sioux City & St. Paul Railroad Company, have been sold and disposed of

to *bona fide* purchasers by the said defendant, Sioux City & St. Paul Railroad Company, and the purchase-money therefor received by said company, and that said defendant, Sioux City & St. Paul Railroad, should account for the whole of the proceeds of class No. 2 and an undivided one-half of the proceeds of classes No. 1 and 4 to the said complainant:

Now, therefore, on motion of John W. Cary, of counsel for complainant, it is ordered, adjudged, and decreed that all of said lands hereinbefore mentioned and described were by said act of Congress approved May 12, 1864, granted to the said State of Iowa in trust to aid in the building of said railroads and belong to said grants; that said complainant, Chicago, Milwaukee & St. Paul Railway Company, has fully complied with all the terms and conditions of said act of Congress granting said lands so far as said lands were given to aid in the construction of a railroad from the foot of Main street, South McGregor, in the State of Iowa, in a westerly direction by the most practicable route on or near the forty-third parallel of north latitude until it should intersect the road running from Sioux City to the Minnesota State line, in the county of O'Brien, in said State, and with the act of the legislature of the State of Iowa approved February 27, 1878, conferring said grant upon the complainant, and has fully completed said railroad within the time specified in said act of Congress and said act of the legislature, and thereby has become entitled to receive all lands contained in said grant not heretofore granted by the State of Iowa to other parties, and is now entitled to all the said lands above described as pertaining to said grant; and it is further order-d, adjudged, and decreed that the said defendant, Sioux City & St. Paul Railroad Company, has fully complied with all the conditions of said act of Congress approved May 12, 1864, granting said lands in the State of Iowa to aid in the construction of a railroad from Sioux City, in said State, to the south line of the State of Minnesota at such point as the said State of Iowa might select between the Big Sioux and the West fork of the Des Moines river, and with the act of legislature conferring said grant upon the said defendant, Sioux City & St. Paul Railroad Company, so far as relates to the lands in question, and fully completed the railroad within the time specified in the said act of Congress and said act of the legislature from the State line of the said
61 State of Minnesota in a southerly direction to Le Mars, in the State of Iowa, a distance of fifty-six and $\frac{25}{100}$ miles, and is entitled to receive all the lands applicable to said grant from said State line of the State of Minnesota to the extent of ten sections per mile for each and every mile of road constructed, including all the lands hereinbefore described as belonging to that grant.

It is further ordered, adjudged, and decreed that the several pieces and parcels of land first above mentioned as clas- No. 1 are a part and portion of said grant so made by said act of Congress and are within the overlapping limits of said grant—that is, within ten miles of the definitely located line of each of said railroads—and that said companies are jointly entitled to said lands, and that said State of Iowa or the proper officers thereof should of right make,

execute, and deliver to the said complainant and the said defendant, Sioux City & St. Paul Railroad Company, jointly, patents for all of said lands in class No. 1 not heretofore patented.

And it is ordered, adjudged, and decreed, and this court, by virtue of the power therein vested, doth order, adjudge, and decree, that the complainant, The Chicago, Milwaukee & St. Paul Railroad Company, and the defendant, The Sioux City & St. Paul Railroad Company are each of them the owner of and entitled to and are hereby invested with the title in fee to an equal undivided one-half of all the lands described above in class No. one, save and except the right of way as excepted in said act of the General Assembly of the State of Iowa approved February 27, 1878.

And it is further ordered, adjudged, and decreed that the said defendant, Sioux City & St. Paul Railroad Company, do release and convey to said complainant one equal undivided half of all of said lands mentioned in class No. 1, which have heretofore been patented to said defendant company by the State of Iowa and the title to which is now held by said defendant company, with covenants against their own acts and free, released, and discharged from the lien of the mortgage deed of trust executed by said Sioux City & St. P. Railroad Company to Elias F. Drake and Alexander H. Rice as trustees.

And it is further ordered, adjudged, and decreed that the lien of said mortgage be, and the same hereby is, vacated, released, and set aside as to the said one equal undivided half of said lands mentioned and described in said class No. 1.

It is further ordered, adjudged, and decreed that all the lands mentioned and described in class No. 2, above mentioned, are a part and portion of said grants so made by said act of Congress and are situated wholly within the granted limits—that is, within ten miles of the definitely located line—of said complainant and not within the granted limits or within ten miles of the located line of the said defendant, Sioux City & St. Paul Railroad Company, and that the complainant is entitled thereto, and that the State of Iowa or the proper officers of said State should of right make, execute, and deliver to the said complainant patents for all of said lands mentioned and described in said class No. 2 not heretofore patented.

And it is further ordered, adjudged, and decreed, and this court, by virtue of the power herein vested, doth order, adjudge, and decree, that the complainant herein, The Chicago, Milwaukee & St. Paul Railroad Company, is the owner of and entitled to and
62 is hereby invested with the title in fee to the whole of the lands above mentioned and described as class No. 2, free and clear of all incumbrances made or placed thereon by the defendants or any or either of them.

And it is further ordered, adjudged, and decreed that the said defendant, Sioux City & St. Paul Railroad Company, release and convey to said plaintiff all said lands mentioned in class No. 2, which have heretofore been patented to said defendant by the State of Iowa, the title to which is now held by said defendant company, with covenants against their own acts and free, released, and dis-

charged from the lien of the mortgage deed of trust executed by said Sioux City & St. Paul Railroad Company to Elias F. Drake & Alexander H. Rice as trustees; and it is further ordered, adjudged, and decreed that the lien of said mortgage be, and the same hereby is, vacated, released, and set aside as to all of said lands mentioned and described in said class No. 2.

It is further ordered, adjudged, and decreed that the several pieces and parcels of land mentioned and described in class No. 3, above mentioned, are a part and portion of said grant made by said act of Congress and are situated wholly within the granted limits—that is, within ten miles of the definitely located line—of said defendant, Sioux City & St. Paul Railroad Company and not within the granted limits or within ten miles of the located line of said complainant, and that the defendant Sioux City & St. Paul Railroad Company is entitled thereto, and that the State of Iowa or the proper officers of said State should of right make, execute, and deliver patents therefor to the said defendant, Sioux City & St. Paul Railroad Company; and it is further ordered, adjudged, and decreed, and this court, by virtue of the power therein vested, doth order, adjudge, and decree, that the defendant Sioux City & St. Paul Railroad Company is the owner of and entitled to and is invested hereby with the title in fee to all of the lands above mentioned and described as class No. 3.

It is further ordered, adjudged, and decreed that the several pieces and parcels of land mentioned and described in class No. 4, above mentioned, are a part and portion of said grant made by said act of Congress and are within the overlapping limits of said grant and are all situated within the indemnity limits—that is, within the twenty miles of the definitely located line—of each of said railroads and not within the ten-mile limits of either, and that — companies are jointly entitled to said lands, and that said State of Iowa or the proper officers thereof should of right make, execute, and deliver to the said complainant and the said defendant, Sioux City & St. Paul Railroad Company, jointly, patents for all of said lands in class No. 4 not heretofore patented; and it is further ordered, adjudged, and decreed, and this court, by virtue of the power therein vested, doth order, adjudge, and decree, that the complainant herein, The Chicago, Milwaukee & St. Paul Railway Company, and the defendant The Sioux City & St. Paul Railroad Company are jointly the owners of and entitled to and are each hereby invested with the title in fee to all of the lands above described as class No. 4; and it is further ordered, adjudged, and decreed that the said defendant, Sioux City & St. Paul Railroad Company, do release and convey to said complainant one equal undivided half of all of said lands mentioned in class No. 4 which have heretofore been patented to said defendant, Sioux City & St. Paul Railroad Company, by the State of Iowa, the title to which is now held by said defendant company, with covenants against their own acts and free, released, and discharged from the lien of the mortgage deed of trust
63 executed by said defendant, Sioux City & St. Paul Railroad Company, to Elias F. Drake & Alexander H. Rice as trustees;

and it is further ordered, adjudged, and decreed that the lien of said mortgage be, and the same hereby is, vacated, released, and set aside as to the said one equal undivided half of said lands mentioned and described in said class No. 4.

It is further ordered, adjudged, and decreed that the said defendant, Sioux City & St. Paul Railroad Company, do account with the said complainant as to all the lands mentioned and described in classes No. 1, 2, and 4 heretofore patented to said company by the State of Iowa, the title to which is not now in said defendant, Sioux City & St. Paul Railroad Company, for the proceeds of such lands, and, on such accounting being perfected, that the said defendant, Sioux City & St. Paul Railroad Company, pay to the complainant the whole amount of the proceeds of said lands in class No. 2 and one-half of the proceeds of all of said lands in classes No. 1 and 4.

And it appearing to the court that W. C. Hillis, commissioner heretofore appointed to make partition of said lands, is absent from the State and may continue so to an indefinite period of time, it is hereby ordered that P. T. Lomax be substituted in his stead; and it is further ordered, adjudged, and decreed that it be referred to P. T. Lomax, John A. Elliott, and Ed. R. Mason, as commissioners, to state said account and make report of their doings to this court; and it is further ordered, adjudged, and decreed that they also make partition of all of said lands jointly held by said companies; the opinion of a majority of said commissioners to prevail on all disputed matters properly arising before them.

J. M. LOVE, *Judge.*

Indorsement: 1481. Eq. Chi., Mil. & St. Paul R'y Co. *v.* Sioux City & St. Paul R. R. Co. Decree. Filed May 21, 1886. Ed. R. Mason, clerk.

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

I, E. R. Mason, clerk of the said court for said district, do hereby certify that the foregoing transcript contains a full, true, and complete copy of the decree in a certain cause depending in said court, wherein The Chicago, Milwaukee & St. Paul Railway is complainant and The Sioux City & St. Paul Railroad Company *et al.* are defendants, as full, true, and complete as the original of the same now remains of record in my office.

In testimony whereof I hereunto subscribe my name
[SEAL.] and affix the seal of said court, at my office, in Des Moines, in said district, this 28th day of May, A. D. 1886.

E. R. MASON,
Clerk U. S. C. C., Southern District of Iowa.

64 EXHIBIT E.

Partition.

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

I, E. R. Mason, clerk of said court for said district, do hereby certify that the transcript hereto attached contains full, true, and complete copies of the commissioners' report or partition and order of confirmation in a certain cause in said court, wherein The Chicago, Milwaukee & St. Paul Railroad Company is complainant and The Sioux City & St. Paul Railroad Company is defendant, as full, true, and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name
[SEAL.] and affix the seal of said court, at my office, in Des Moines, in said district, this 29th day of October, A. D. 1886.

E. R. MASON,
Clerk U. S. C. C., Southern District of Iowa.

Circuit Court of the United States, District of Iowa.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.
vs.
THE SIOUX CITY & ST. PAUL RAILROAD CO. and Others. } In Equity.

To the judges of said court:

In pursuance of and in obedience to a decretal order in the above-entitled cause, dated on the 19th day of May, 1882, as modified by a subsequent decretal order made on the 21st day of May, 1886, by which the undersigned, P. T. Lomax, John Elliott, and Edward R. Mason, were appointed commissioners, among other things, to make partition between the said complainant, Chicago, Milwaukee & St. Paul Railway Company, and The Sioux City & St. Paul Railroad Company of all the lands mentioned and described in said last-named decretal order as class No. 1 and as class No. 4, awarding to each of said companies an equal half thereof, we, the said commissioners do hereby respectfully report and return:

That, having been first duly sworn and having severally taken the oath hereto annexed and having been attended by counsel of the respective parties, John W. Cary, Esq., appearing for the complainant, and J. H. Swan, Esq., appearing for the defendant The Sioux City & St. Paul Railroad Company, we have carefully considered the matters referred to us in said commission and have satisfied ourselves of the condition and situation thereof.

1. We find and report that all the following pieces and parcels of land of said classes 1 and 4 of said decree herein particularly described in Schedule A had, prior to the making of said decree, on the 21st day of May, 1886, been sold and disposed of by the defend-

ant The Sioux City & St. Paul Railroad Company and conveyances therefo made to actual purchasers, and that the complainant, Chicago, Milwaukee & St. Paul Railway Company, had assented thereto and had executed a conveyance ratifying and confirming said sales, and for that reason no partition of said lands in
65 Schedule A has been made, to wit:

List of Lands in Class No. One (1), *Schedule "A."*

Description.	Section.	Town.	Range.	Acres.
Patented all	3	98	40	641.98
Patented all	5	98	40	640.98
Patented all	7	98	40	601.82
Patented all	11	98	40	640.00
Patented all	17	98	40	640.00
Patented all	19	98	40	613.60
Patented all	21	98	40	640.00
Patented all	31	98	40	625.28
Patented s e q'r, s h'f of n e, s h'f of n w q'r	31	99	40	308.90
Patented s e q'r and s h'f of n e q'r.	33	99	40	240.00
Patented all	1	98	41	639.00
Patented all	3	98	41	646.84
Patented all	5	98	41	654.42
Patented all	7	98	41	612.42
Patented all	9	98	41	640.00
Patented all	11	98	41	640.00
Patented all	13	98	41	640.00
Patented all	15	98	41	640.00
Patented all	17	98	41	640.00
Patented all	19	98	41	612.00
Patented all	21	98	41	640.00
Patented all	23	98	41	640.00
Patented all	25	98	41	640.00
Patented s h'f of s e q'r	27	98	41	80.00
Patented all	29	98	41	640.00
Patented all	31	98	41	635.26
Patented all	33	98	41	640.00
Patented all	35	98	41	640.00
Patented s h'f and s h'f of n h'f.	31	99	41	472.19
Patented s h'f and s h'f of n h'f.	33	99	41	480.00
Patented s h'f and s h'f of n h'f.	35	99	41	480.00
Patented all	1	98	42	662.18
Patented all	3	98	42	665.74
Patented all	5	98	42	669.72
Patented e h'f of e h'f.	7	98	42	160.00
Patented all	9	98	42	640.00
Patented all	13	98	42	640.00

List of Lands in Class No. One, etc.—Continued.

Description.	Section.	Town.	Range.	Acres.
Patented all	17	98	42	640.00
Patented e h'f of e h'f	19	98	42	160.00
Patented all	21	98	42	640.00
Patented all	23	98	42	640.00
Patented all	25	98	42	640.00
Patented e h'f	27	98	42	320.00
Patented n h'f	29	98	42	320.00
Patented e h'f of e h'f	31	98	42	160.00
Patented all	33	98	42	640.00
Patented all	35	98	42	640.00
Patented e h'f of s e q'r, s e q'r of n e q'r	31	99	42	120.00
Patented s h'f and s h'f of n h'f	33	99	42	480.00
Patented s h'f and s h'f of n h'f	35	99	42	480.00
N e q'r of s e q'r, e h'f of s w	35	97	41	120.00
S h'f	29	97	42	320.00
Class one (1), Schedule A				27,702.33

66 *List of Lands in Class No. Four* (4), *Schedule "A."*

Description.	Section.	Town.	Range.	Acres.
Patented w h'f	5	99	38	346.36
Patented all	7	99	38	612.72
Patented all	17	99	38	640.00
Patented n h'f	19	99	38	310.91
Patented s e q'r	21	99	38	160.00
Patented s h'f	27	99	38	320.00
Patented s e q'r and s e q'r of n e q'r	29	99	38	200.00
Patented n w q'r	33	99	38	160.00
Patented school lot in	35	99	38	1.00
Patented s w q'r	17	100	38	160.00
Patented s h'f	19	100	38	304.74
Patented s h'f	21	100	38	320.00
Patented e h'f, e h'f of w h'f, s w q'r of n w q'r	27	100	38	520.00
Patented all	29	100	38	578.75
Patented all	31	100	38	609.32
Patented all	33	100	38	236.80

List of Lands in Class No. Four, etc.—Continued.

Description.	Section.	Town.	Range.	Acres.
Patented n h'f, s e q'r, n h'f of s w q'r, s w q'r of s w	35	100	38	600.00
Patented n e q'r	1	99	39	186.39
Patented all	3	99	39	689.52
Patented w h'f and n e q'r	11	99	39	480.00
Patented all	13	99	39	640.00
Patented all	15	99	39	640.00
Patented e h'f and s w q'r	21	99	39	480.00
Patented all	25	99	39	640.00
Patented all	27	99	39	640.00
Patented n h'f	33	99	39	320.00
Patented s h'f	13	100	39	320.00
Patented n e q'r, s w q'r, right of way in s e q'r of s e q'r	25	100	39	326.35
Patented all	35	100	39	640.00
Patented e h'f of e h'f	7	100	42	102.26
Class No. four (4), Schedule "A"	....	.....	.....	12,185.02

2nd. We further report that we have made partition of all the rest and residue of said lands described in classes No. 1 and No. 4 of said decree between said parties according to their respective rights and interests therein as the same have been ascertained, declared, and determined by the said court, as we were by the said decretal order commanded. We divided the whole of said last-named premises into two lots, each of which allotments is, in our opinion, of equal value, and submitted said allotments to the respective counsel, who stated that they did not care to be further heard thereon, and that we have set off in severalty to the said complainant, Chicago, Milwaukee & St. Paul Railway Company, all those certain pieces and parcels of said premises designated and described as Schedule B, as follows, to wit:

67 *List of Lands in Class No. One* (1), *Schedule "B."*

Description.	Section.	Town.	Range.	Acres.
Patented s h'f	9	98	40	320.00
Patented s h'f of n w q'r	33	99	40	80.00
Patented s w q'r	31	99	40	137.88
Patented s w q'r	33	99	40	160.00
Patented n e q'r, n h'f of s e q'r	27	98	41	240.00
Patented s h'f of s e q'r	3	95	42	80.00
E h'f	5	95	41	319.68
(N e q'r of n w q'r)	7	96	41	40.00
N e q'r of s w q'r	17	96	41	40.00
N w q'r of n e q'r	5	97	41	35.48
N e q'r of s w q'r	11	97	41	40.00
N w q'r of n w q'r	17	97	41	40.00
N w q'r of s w q'r	19	97	41	40.71
N h'f, s w q'r, n h'f of s e q'r	3	95	42	549.60
N h'f of n h'f	11	95	42	160.00
All	1	96	42	641.96
N h'f	5	96	42	334.94
E h'f of n e q'r	7	96	42	80.00
All	9	96	42	640.00
All	13	96	42	640.00
E h'f	17	96	42	320.00
E h'f of e h'f	19	96	42	160.00
All	21	96	42	640.00
All	25	96	42	640.00
All	27	96	42	640.00
E h'f of n e q'r	31	96	42	80.00
All	25	96	42	640.00
All	1	97	42	607.20
All	5	97	42	590.40
E h'f of e h'f	7	97	42	160.00
All	13	97	42	640.00
All	23	97	42	640.00
All	27	97	42	640.00
N e q'r of n e q'r, s e q'r of s e q'r	31	97	42	80.00
N h'f	33	97	42	320.00
				11,417.85

List of Lands in Class No. Four (4), *Schedule "B."*

Description.	Section.	Town.	Range.	Acres.
Patented s h'f, s w q'r of n e, s h'f of n w q'r, and n e q'r of n w q'r....	7	99	37	477.64
Patented n w q'r of n e q'r, s h'f of n e q'r, n w q'r of n w q'r, & s h'f of n w q'r.....	19	99	37	226.79
Patented s h'f.....	19	99	37	305.73
Patented all.....	3	98	38	640.50
Patented all.....	9	98	38	640.00
Patented all.....	1	99	38	683.78
Patented n w q'r of n e q'r.....	5	99	38	53.21
Patented n e q'r, n h'f of n w q'r, s w q'r, w h'f of s e q'r, n e q'r of s e q'r.....	11	99	38	520.00
Patented s h'f, n e q'r, s h'f of n w q'r, n e q'r of n w q'r.....	13	99	38	600.00
Patented s h'f...	19	99	38	311.35
Patented n h'f, n h'f of s w, s e q'r of s w q'r....	21	99	38	440.00
68 Patented all.....	25	99	38	640.00
Patented n w q'r of n e q'r...	29	99	38	40.00
Patented s e q'r, n h'f, n h'f of s w q'r	31	99	38	548.21
Patented n e q'r, e h'f of s w q'r....	33	99	38	240.00
Patented e h'f.....	1	98	39	321.47
Patented n w q'r.....	21	99	39	160.00
Patented n h'f.....	23	99	39	320.00
Patented n h'f.....	29	99	39	320.00
Patented all.....	35	99	39	640.00
Patented n w q'r.....	*c*25	100	39	160.00
Class No. four (4), Schedule "B".....	....	.....	.....	8,288.68

List of Lands in Class No. Four (4), *Schedule "B."*

Description.	Section.	Town.	Range.	Acres.
S w q'r, n w q'r of n w, s h'f of n w, s e of n e, n w q'r of s e, s h'f of s e q'r	7	98	38	427.42
N e q'r	17	98	38	160.00
N w q'r and s w q'r of n e q'r	21	98	38	200.00
S h'f of n h'f and s h'f	7	95	40	483.96
W h'f	15	95	40	320.00
All	17	95	40	640.00
All	19	95	40	651.52
All	21	95	40	640.00
W h'f	23	95	40	320.00
All	27	95	40	640.00
All	29	95	40	640.00
All	13	95	42	640.00
All	25	95	42	640.00
N h'f	29	95	42	320.00
Class No. four (4), Schedule "B"	....	.....	.....	15,011.58

And we have also set off in severalty to the said Sioux City & St. Paul Railroad Company all those certain pieces and parcels in said premises designated and described as Schedule "C" as follows, to wit:

List of Lands in Class No. One (1), *Schedule "C."*

Description.	Section.	Town.	Range.	Acres.
S w q'r of n w q'r	7	97	40	36.50
W h'f	5	95	41	318.64
? (n h'f of n h'f)	7	95	41	150.52
N e q'r of n w q'r	3	96	41	39.94
S e q'r of n e q'r	15	96	41	40.00
S w q'r of s w q'r	13	97	41	40.00
All	1	95	42	642.26
All	5	95	42	630.82
N e q'r of n e q'r	7	95	42	40.00
N h'f of n h'f	9	95	42	160.00
All	3	96	42	646.16
S h'f	5	96	42	320.00
E h'f of s e	7	96	42	80.00
All	11	96	42	640.00

List of Lands in Class No. One, etc.—Continued.

Description.	Section.	Town.	Range.	Acres.
All	15	96	42	640.00
W h'f	17	96	42	320.00
69 All	23	96	42	640.00
All	29	96	42	640.00
E h'f of s e q'r	31	96	42	80.00
All	33	96	42	640.00
All	3	97	42	595.60
(Right of way 1.08 acres) all	9	97	42	638.92
(Right of way 19.71 acres) all	17	97	42	620.29
(Right of way 10.53 acres) e h'f of e h'f	19	97	42	149.47
All	25	97	42	640.00
S e q'r of n e q'r, n e q'r of s e q'r	31	97	42	80.00
S h'f	33	97	42	320 00
All	35	97	42	640.00
(Patented) all	29	98	40	640.00
(Patented) s e q'r of n w q'r	7	96	41	40.00
(Patented) w h'f	27	98	41	320.00
Total class No. one, Schedule "C"				11,429 12

List of Lands in Class No. Four (4), *Schedule "C."*

Description.	Section.	Town.	Range.	Acres.
Patented s h'f	31	100	37	317.17
Patented all	5	98	38	641.56
Patented n e q'r of n w q'r	7	98	38	40.00
Patented all	11	98	38	640.00
Patented n e q'r, w h'f of n w, n h'f of s w, s e q'r	3	99	38	513.78
Patented s e q'r of n e q'r	5	99	38	40.00
Patented s e q'r	7	99	38	160.00
Patented all	9	99	38	640.00
Patented all	15	99	38	640.00
Patented n h'f, s w q'r, n h'f of s e, s e q'r of s e q'r	23	99	38	600.00
Patented n h'f	27	99	38	320.00
Patented w h'f of w h'f	29	99	38	160.00
Patented s e q'r and w h'f of s w q'r	33	99	38	240.00

List of Lands in Class No. Four, etc.—Continued.

Description.	Section.	Town.	Range.	Acres.
Patented n h'f, s w q'r, s w q'r of s e q'r	35	99	38	518.00
Patented n e q'r, n h'f of n w q'r, s w q'r of n w q'r	19	100	38	261.58
Patented w h'f	1	98	39	321.69
Patented n w q'r & s h'f	1	99	39	506.25
Patented s e q'r	11	99	39	160.00
Patented s h'f	23	99	39	320.00
Patented s h'f	29	99	39	320.00
Patented n h'f of n h'f	31	99	39	148.79
Patented all	23	100	39	640.00
Patented s e q'r	25	100	39	153.75
				8,302.57

70 *List of Lands in Class No. Four* (4), *Schedule "C."*

Description.	Section.	Town.	Range.	Acres.
All	15	98	38	640.00
N w q'r	17	98	38	160.00
S h'f of n w q'r, s w q'r	9	95	40	240.00
S h'f of n h'f and s h'f	11	95	41	480.00
All	13	95	41	640.00
All	15	95	41	640.00
W h'f	19	95	41	288.76
All	23	95	41	640.00
All	25	95	41	640.00
All	27	95	41	640.00
All	23	95	42	640.00
All	27	95	42	640.00
S h'f	29	95	42	320.00
E h'f of n e q'r	31	95	42	80.00
				6,688.76
Total class. No four (4), Schedule C				14,991.33

And we further certify and report that the items of the various expenses attending the execution of the said order, including our fees as commissioner-, are contained in the schedule hereto annexed marked " D" and forming a part of this report.

In witness whereff we, the said commissioners, have set our hands to this our report this 25th day of October, in the year of our Lord one thousand and eight hundred and eighty-six.

(Signed) P. T. LOMAX,
JOHN A. ELLIOTT,
E. R. MASON,
Commissioners.

STATE OF IOWA, } ss:
County of Polk, }

Be it remembered that on the 25th day of October, 1886, P. T. Lomax, John A. Elliott, and Edward R. Mason, to me known to be the persons who subscribed the foregoing report, appeared before *ne*, the undersigned, and acknowledged the execution of the foregoing report, and that the same was their free act and deed for the uses and purposes therein mentioned.

(Signed) JOHN D. JORDAN,
[NOTARIAL SEAL.] *Notary Public, Polk County, Iowa.*

United States Circu*ti* Court, Southern District of Iowa, Central Division, October Term.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.
vs.
SIOUX CITY & ST. PAUL RAILROAD COMPANY. } No. 1481. Equity.

THURSDAY, *October* 28, 1886.

This cause came on this day for hearing. The complainant appear ing by Geo. E. Clarke and the defendant appearing by J. H. Swan and consenting thereto, it is now ordered that the report of commissioners of partition made under and in pur*a*uance of the decree entered in this cause at the May term, 1886, be, and the same is hereby, in all respects ratified, approved, and confirmed.

(Endorsed:) Filed May 5th, 1891. A. J. Van Duzee, clerk. J. H Bolton, deputy.

71 Circuit Court of the United States for the Northern District of Iowa, Western Division.

UNITED STATES *vs.* THE SIOUX CITY & ST. PAUL RAILROAD COMPANY and The Chicago, Milwaukee & St. Paul Railway Company.	Original Bill.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY *vs.* UNITED STATES and THE SIOUX CITY & ST. PAUL RAILROAD CO.	Crossb-ill.
BEN. OLSON and Others *vs.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, THE SIOUX CITY & ST. PAUL RAILWAY COMPANY, and THE UNITED STATES.	Cross-bill.

Agreed Statement of Facts.

For the purpose of the trial of this cause it is hereby stipulated and agreed by and between the respective parties whose names are hereunto subscribed that the following statement of facts, together with the exhibits hereto attached or herein referred to, shall be received and considered as the evidence in this cause with the same force and effect as if taken in the usual manner, subject, however, to such objections as may be herein stated to each paragraph or to any exhibit herein referred to. Nothing, however, in any of the objections herein set forth shall be considered as raising the question that the said statement of facts or said exhibits or any of them are not the best evidence, and such statements or exhibits shall be received and considered by the court so far as the originals thereof would be admissable as evidence in the case.

(1.) All exhibits of acts of Congress or of the State legislature of the State of Iowa, copies of which as exhibits are attached to the original complaint or to the answer of the United States to the amended cross-bill of the Chicago, Milwaukee & St. Paul Railway Company, may be received and read in evidence with the same force and effect as certified copies of the originals of said acts.

72 (2.) That the line of railroad mentioned in said act of Congress extending from Main street, South McGregor, in a westerly direction on or near the 43rd parallel of north latitude was built and constructed by the McGregor Western Railroad Company to Calmar on or before the first day of January, 1868.

(3.) That the McGregor & Sioux City railroad, whose name was subsequently changed to McGregor & Missouri River Railroad Company, constructed said railroad from Calmar to Algona prior to 1871.

(4.) That said railroad was constructed from Algona to Sheldon, to a junction with the Sioux City & St. Paul road in O'Brien county, Iowa, in the — 1878 by the Chicago, Milwaukee & St. Paul Railway Company.

(5.) That the governor of the State of Iowa issued certificates at different times during said construction to the Secretary of the Interior showing the construction of the several parts of said railroad as provided by said act of Congress, and that the same was fully completed from McGregor to said point of junction in O'Brien county, Iowa, in October, 1878.

(6.) That the map attached to the cross-bill of the Chicago, Milwaukee & St. Paul Railway Company is a correct representation of the lands embraced within said act of Congress, so far as said lands are within the overlapping limits of said grants; that it correctly represents the lines of said railroads as definitely located and the lines of actual construction of said roads within the overlapping limits, and that the granted or ten-mile limit of each of said road and the indemnity or 20-mile limit of each of them are correc marked thereon, so far as the aforesaid limits of said lands over each other.

(7.) That the distance from South McGregor to Calmar is 43 mi from Calmar to Algona 126 miles, from Algona to Sheldon, the po of junction, 85 miles.

(8.) That no lands were ever conveyed under said grant to s McGregor Western Railroad Company, and that said McGr Western Railroad Company transferred all its right to such l to the McGregor & Sioux City Railway Company by an instrun in writing made on the 25th day of April, 1868.

(9.) That the McGregor & Sioux City Railway Company, by name of the McGregor & Missouri River Railway Company ceived under said grant 137,738 and $\frac{26}{100}$ acres of land, and the Chicago, Milwaukee & St. Paul Railway Company rec under said grant by patents from the State of Iowa 219,89 $\frac{46}{100}$ acres of land and set apart by decree of patented lands 4 acres, making the total amount of land received by said comp on account of the construction of said road under said grant 3 and $\frac{72}{100}$ acres of land, and that no other or greater amount o has ever been received by any or all of said companies und grant.

(10.) That in the year 1879 the said Chicago, Milwa Paul Railway Company purchased of all the stockhol McGregor & Missouri River Railroad Company all of t ock of the said McGregor & Missouri River Railroad Company, a thereby became and are still the sole owners of said stock and th property, rights, and franchises of said company.

(11.) That a full grant for the located line of the road from Calmar to the point of junction at Sheldon, being about 225 miles,
73 would amount to 1,440,000 acres, and that extracts from the opinion of L. Q. C. Lamar, Secretary of the Interior, and of Louis A. Groff, Commissioner of the General Land Office, hereto

attached as Exhibits 1 and 2, may be received and read in evidence under this stipulation.

(12.) That all the lands mentioned and described in classes 1, 2, and 3 on the 10th and 11th pages of the amended cross-bill, being a part of the lands mentioned and described in the original bill of complaint and amounting to about 21,000 acres, are all situated within the granted or indemnity limits of the said grant of the line of road as finally located from McGregor to said point of junction in O'Brien county.

(13.) That the lands mentioned and described in class 1 are all situated within the granted or ten-mile limits of said line as definitely located, and that classes 2 and 3 are within the indemnity or 20-mile limit of said grant, and that said lands mentioned in classes 1 and 2 are also within the ten-mile or granted limits of the Sioux City & St. Paul Railroad Company, and the lands in class 3 are within the 20-mile or indemnity limits of the line of said last-named company.

(14.) That all of the lands described in paragraph 21 of the original bill of complainant herein and included in the aforesaid classes 1, 2, and 3 of the amended cross-bill of the Chicago, Milwaukee & St. Paul Railway Company were included in the three patents issued by the United States to the State of Iowa as follows: One on October 16th, 1872; one on June 17th, 1873; one on January 25th, 1875, copies of which patents are set out at length as Exhibits No. 11, 12, and 13 attached to the agreed statement of facts filed in this cause in the controversy between the United States and the Sioux City & St. Paul Railroad Company, to which exhibits reference is hereby made.

(15.) That prior to the 27th day of February, 1878, the Sioux City & St. Paul Railroad Company had completed its road from the south line of the State of Minnesota to the town of Le Mars, in the State of Iowa, and made their arrangements with the Illinois Central Railroad Company for the use of its track from Le Mars to Sioux City, and that it had received from the State of Iowa patents for all the lands which were ever patented to it by said State under said grant.

(16.) That on the 4th day of March, 1879, a suit was instituted by the Chicago, Milwaukee & St. Paul Railway Company against the Sioux City & St. Paul Railroad Company, A. H. Rice, and E. F. Drake, trustees, and against John H. Gear, governor of the State of Iowa, and J. K. Powers, register of the State land office of the State of Iowa, in the circuit court of the United States for the district of Iowa. A copy of its said bill of complaint in said cause is attached to the statement of facts filed herein between the United States and the Sioux City & St. Paul Railroad Company as Exhibit No. 16 thereof, and to which reference is hereby made.

(17.) That to said bill of complainant the Sioux City & St. Paul Railroad Company, Alexander H. Rice, and Elias F. Drake, trustees, filed their joint answer on the 30th day of May, 1879, a copy of which is attached to the above-named statement of facts as Exhibit No. 17 thereof, and to which reference is hereby made.

(18.) That to said bill of complaint John H. Gear, governor of the State of Iowa, and J. K. Powers, register of the State land office, by J. F. McJunkin, attorney general of the State of Iowa, filed their answer, a copy of which is attached to the aforesaid statement of facts as Exhibit No. 18, to which reference is hereby made.

74 (19.) That a decree having been rendered in said cause in the said circuit court of the United States for the district of Iowa on the 18th day of May, 1882, an appeal was taken therefrom to the Supreme Court of the United States by the Chicago, Milwaukee & St. Paul Railway Company and by the Sioux City & St. Paul Railroad Company, and upon said *said* appeal the decision of the said district court was reversed and the said cause remanded to said last-named court for further proceedings therein in conformity with the opinion of the said Supreme Court of the United States, which opinion is reported in vol. 117 of the U. S. Supreme Court Reports, on page 406.

(20.) That thereupon such further proceedings were had in conformity with the aforesaid opinion of the Supreme Court of the United States as that a decree was entered in said circuit court of the United States for the district of Iowa on the 21st day of May, 1886, a copy of which is attached to the answer of the United States to the amended cross-bill of the Chicago, Milwaukee & St. Paul Railway Company as Exhibit "D" thereof, and to which reference is made.

(21.) That thereafter, to wit, on the 28th day of October, 1886, the said Chicago, Milwaukee & St. Paul Railway Company and the said Sioux City & St. Paul Railroad Company, each appearing by their respective attorneys and consenting thereto, a decree in partition was entered in said cause in the said U. S. circuit court for the district of Iowa segregating and setting apart in severalty the lands embraced in the aforesaid decree rendered in said cause on the 21st day of May, 1886, a copy of which decree in partition is attached to the answer of the United States to the amended cross-bill of the Chicago, Milwaukee & St. Paul Railway Company herein as Exhibit "E" thereof, and to which reference is hereby made.

(22.) That by the said decree in partition all the lands described in paragraph 21 of the original bill of complaint herein and in classes 1, 2, and 3 of the amended cross-bill of the Chicago, Milwaukee & St. Paul Railway Company herein were partitioned and set apart in severalty to the Sioux City & St. Paul Railroad Company.

(23.) That in a proceeding before L. Q. C. Lamar, as Secretary of the Interior of the United States, for an adjustment of the said grant of May 12th, 1864, and upon an application made before said Secretary on behalf of certain settlers in the county of O'Brien, Iowa, and upon which application and hearing the said Chicago, Milwaukee & St. Paul Railway Company and the said Sioux City & St. Paul railroad were each represented and heard by their respective counsel, the Secretary of the Interior refused to authorize the institution of any suit against the Chicago, Milwaukee & St. Paul Railway Company for the recovery of any portion of the lands set apart to it in severalty

by the aforesaid decree in partition, the said company having claimed said land and objected to the institution of such suit.

(24.) That all that portion of lands described in the aforesaid decree in partition as having been theretofore patented by the State of Iowa to the Sioux City & St. Paul Railroad Company, which were therein set apart in severalty to the Chicago, Milwaukee & St. Paul Railway Company, were by said last-named company received and by it thereafter sold and conveyed to *bona fide* purchasers for a valuable consideration.

(24.) That after the rendition of the aforesaid decree in partition and after the decision of the Secretary of the Interior, made
75 on the 26th day of July, 1887, aforesaid, the said Chicago, Milwaukee & St. Paul Railway Company renewed an application theretofore made to the governor of the State of Iowa for patents to all that portion of the lands set apart by the said decree in partition to it which had not theretofore been certified or patented by the said State of Iowa, and the governor of the said State of Iowa thereupon, to wit, on the 27th day of September, 1887, made and delivered to said last-named company patents to all of said last-named lands, which lands said company thereupon sold and conveyed to *bona fide* purchasers for value.

(25.) That the first list of lands appearing on page 8 of the answer of the United States to the amended cross-bill of the Chicago, Milwaukee & St. Paul Railway Company herein correctly describes that portion of the lands referred to in paragraph 21 of the original bill of complaint which lie west of the western terminal of the McGregor Western Railway Company and its successor, the Chicago, Milwaukee & St. Paul Railway Company.

(26.) That the second list of lands described on page 8 in said last-named answer correctly describe- that portion of the lands set forth in paragraph 21 of the original bill of complaint which lie within the place limits of the located line of the Sioux City & St. Paul Railroad Company and outside of the place but within the indemnity limits of the Chicago, Milwaukee & St. Paul Railway Company.

(27.) That the lists of lands set forth on page 9 of said last-named answer correctly describes that portion of the lands set forth in par. 21 of the original bill of complaint which lie within the joint place limits of the located lines of the Sioux City and St. Paul Railroad Co. and the Chicago, Milwaukee and St. Paul Railway Co.

(28.) That the list of lands described on page 10 of said last-named answer correctly describe- that portion of the lands set forth in paragraph 21 of the original bill of complaint herein which lie within the joint indemnity limits of the Sioux City & St. Paul Railway Company and the Chicago, Milwaukee & St. Paul Railway Company and outside of the place limits of each of said companies.

(29.) That the McGregor Western Railway Company and its successors, including the Chicago, Milwaukee & St. Paul Railway Company, have heretofore received patents from the State of Iowa for all the odd-numbered sections or parts of sections embraced within

the place and indemnity limits of its located line of road not sold, reserved, or otherwise disposed of at the date of the location of its said road or at the date of the selection of that portion of the lands lying within the indemnity limits, unless it be determined in this action that the lands in controversy herein are a portion of said lands; all of which lands so received amount to 399,557.72 acres.

(30.) That reference is hereby made to an agreed statement of facts filed in this cause upon the hearing of the controversy between the United States and the Sioux City & St. Paul Railroad Company and to the exhibits attached to said agreed statement, and said statement and said exhibits may be read and considered as a part of the evidence in this cause so far as they in anywise relate to the issues in controversy herein between the Chicago, Milwaukee & St. Paul Railway Company and the United States.

(31.) The Chicago, Milwaukee & St. Paul Railway Company object to the entire proceedings of a suit originally brought by the Chicago, Milwaukee & St. Paul Railway Company against the Sioux City & St. Paul Company as incompetent and immaterial evidence in this cause. They also object to the proceedings before the Secretary of the Interior.

JOHN W. CARY,
Sol. for C., M. & St. P. R'y Co.

76 (32.) That for the purpose of this trial it is hereby stipulated and agreed that the plaintiffs in the cross-bill filed herein by Ben. Olson *et al.*, respectively, entered upon the lands described in Exhibit "A" attached to said cross-bill at the dates set opposite the respective tracts of land in said exhibit mentioned and made claim to the respective tracts under the homestead and pre-emption laws of the United States at the dates therein stated; that at or about the time of said settlement the said parties filed their respective applications to enter said tracts of land under the homestead and pre-emption laws of the United States with the register and receiver of the United States land office at Des Moines, Iowa, which applications were rejected as conflicting with the rights of the Sioux City & St. Paul Railroad Company to said lands; that appeals were taken from said decisions, and that said parties have ever since continued to improve and cultivate said lands under and by virtue of said claims, and in some instances have made large and valuable improvements thereon.

(33.) It is further stipulated that the lands so settled upon and claimed by the respective parties are situated with reference to the located lines of the Sioux City & St. Paul Railroad Company and the Chicago, Milwaukee & St. Paul Railway Company as stated in Schedule One, Two, Three, and Four of said Exhibit "A."

E. C. HUGHES,
Attorney for Plaintiff, United States of America.
JOHN W. CARY,
Attorney for Defendant, Chicago, Milwaukee & St. Paul R. R. Co.
JOY, HUDSON, CALL & JOY,
Attorneys for Ben. Olson et al., Plaintiffs in Cross-bill.

77 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July* 26, 1887.

The Commissioner of the General Land Office.

SIR: In January last an application was filed in this department in behalf of certain settlers in O'Brien county, Iowa, asking that suit be commenced and prosecuted in the name of the United States to assert title to about 55,297.21 acres of land in said O'Brien county, claimed by the Sioux City & St. Paul Railroad Company and the Chicago, Milwaukee & St. Paul Railway Company, respectively, under and by virtue of the grant to the State of Iowa by act of Congress approved May 12, 1864 (13 Stat., 72).

Applicatants aver that neither of the companies mentioned has earned the lands in question nor any of them; that they, the said applicants, are settlers upon said lands, and that they are seeking to acquire titles to the same under the settlement laws of the United States. (Here follows quotations from act of Congress of May 12, 1864, and discussion of the rights of the Sioux City & St. Paul, and then proceeds:)

The next inquiry is with reference to the Milwaukee Company and its claims and holdings.

The act of 1864 made a grant to the State of Iowa for the use and benefit of the McGregor Western Railroad Company for the purpose of aiding in the construction of a railroad from South McGregor, in said State, in a westerly direction by the most practicable route in or near the forty-third parallel of north latitude until it should intersect the Sioux City road in O'Brien county. Said grant, like that for the Sioux City Company, was of every alternate section of land designated by odd numbers for ten sections in width on each side of the road, with provision for indemnity for lands lost as specified in the act.

August 26, 1864, the McGregor Western Railroad Company filed in the General Land Office a map showing the location of its line of road from McGregor to a point not far from the center of O'Brien county. September 8, 1864, this department directed the General Land Office to withdraw from market the odd-numbered sections within twenty miles of the line as shown by said map.

September 12, 1864, the General Land Office, by letters to the proper district land officers, ordered said lands withdrawn.

November 13, 1865, the governor of Iowa certified to the completion of forty miles (four sections of ten miles each) of said road, extending from McGregor to Calmar.

February 27, 1868, the State of Iowa, by act of its legislature and under authority vested in it by the act of Congress, resumed the grant to the McGregor Western Railroad Company on account of said company's failure to build its road as required (Laws of Iowa, 1868, chapter 16) and by act approved March 31, 1868, conferred the same upon the McGregor & Sioux City Railway Company (Laws of Iowa, 1868, chap. 58). Said act provided by the ninth section thereof that the McGregor & Sioux City Company should, in the

manner therein specified, accept the grant as made by said act within sixty days after its passage. It also required as a further condition that said company should procure and file with the
78 Secretary of State a full and effectual release and surrender of all claim, right, or interest of the McGregor Western Railroad Company, its successors or assigns, in or to any of the lands granted by the act of May 12, 1864.

April 28, 1868, the McGregor Western Company assigned to the McGregor and Sioux City Company, and on the same day the latter company accepted the grant, at the same time protesting against certain restrictions therein. The release required by the act of the legislature was at the same time duly executed.

In the meantime the Sioux City & St. Paul Company had, in July, 1867, filed its map of definite location of the line north and south from the Minnesota State line to Sioux City, and it became apparent that the line of the McGregor and Sioux City road as it had been located by its predecessor, the McGregor Western Company, would not intersect the north and south road, nor would it if extended westward intersect said road in O'Brien county, as required by the granting act of 1864, for the reason that the north and south road only crossed the county of O'Brien at its northwest corner. Accordingly the General Land Office on May 13, 1868, addressed a letter to the governor of Iowa which, after making reference to the line of road to sec. 19, T. 95 N., R. 40 west, near the center of O'Brien county, requested, in view of the adjustment of the grant, that the McGregor Western Company be caused at an early day to file a properly authenticated map showing the true location of its line through Clay & O'Brien counties to the point of intersection with the Sioux City & St. Paul railroad.

November 13, 1868, replying to a letter from D. C. Shepherd, chief engineer of the McGregor & Sioux City Company, proposing delay until the following spring of the survey and location to be made under the requirement above referred to, the General Land Office insisted that the work be commenced immediately in order that the grant might be adjusted and the limits of the lands to be held as double minimum fixed.

In January, 1869, the McGregor & Sioux City Company filed in the General Land Office a map showing the definite location of its road through Clay county.

February 4, 1869, the lands within the twenty miles of the line as shown by said map were ordered withdrawn.

March 18, 1869, the McGregor & Sioux City Company, by its president, applied to the General Land Office for permission to withdraw the maps theretofore filed by said company and its predecessor and to relocate its road westward from a point near Algona, in Kossuth county.

Said application was denied by the General Land Office and by the Secretary on appeal (May 10, 1869) for the reason that after a road has been definitely located, the map thereof filed and accepted, and the lands withdrawn, no specific authority is given for accepting another location.

September 2, 1869, a map showing the definite location of the McGregor & Sioux City road from the west line of Clay county to the point of intersection with the Sioux City — St. Paul road in sec. 19, T. 97 N., R. 42 W., O'Brien county, was filed in the General Land Office, and on March 15, 1870, the lands within twenty miles of the line as shown by said map were ordered withdrawn.

In October, 1869, the name of the McGregor & Sioux City Railway Company was changed to McGregor & Missouri River Railway Company, said change being duly certified by the Secretary of State.

79 December 5, 1870, the governor of Iowa certified to the completion of the road to Algona, a distance of 182.2 miles from McGregor.

March 15, 1876, the State, by act of its legislature, resumed the grant, the McGregor & Missouri River Company having failed to construct its road west of Algona, but by the same act again conferred the grant upon the same company, subject to certain additions.

Said company having failed to accept the grant made as above mentioned, the State, by act of its legislature approved February 27, 1878, again resumed the grant and conferred the same upon the Chicago, Milwaukee & St. Paul Railway Company. This company accepted the grant and completed the road from Algona westward to point of intersection with the Sioux City road at Sheldon, in O'Brien county. November 30, 1878, the governor of Iowa certified to the completion of the road from Algona in a westerly direction to the town of Sheldon, in the county of O'Brien, which town is on the line of the Sioux City road. He at the same time certified that the railroad thus constructed "is part of a railroad from a point at or near the foot of Main street, South McGregor, in the State of Iowa, in a westerly direction by the most practicable route on or near the forty-third parallel of north latitude to a point of intersection with a road running from Sioux City to the Minnesota State line, in the county of O'Brien, in said State, as contemplated in said act of Congress approved May 12, 1864." He further certified "that the whole of said last-mentioned railroad is now completed and in running order."

The question was then raised as to whether the road had been constructed on the line of definite location, and whether, if it had not been so constructed, the grant should be adjusted on the line of definite location or on the line of the constructed road. The question as then presented seems to have had reference particularly to that portion of the road in Clay and O'Brien counties the line of which was located in 1869, notwithstanding there had been what purported to be a location in 1864. The question was raised not because of the new location, but because there appeared to be some deviation of the line of road as constructed from the line of definite location by the maps filed in 1869.

The question thus presented was by the department submitted to the Attorney General for his opinion. That officer, under date of February 2, 1880 (16 Op., 457), hold that, in contemplation of the

statute, the road was to be constructed upon the line of definite location, and therefore whatever adjustment of the grant is made must be made according to the line of definite location of the road; that whether the road has been constructed on the line of definite location is a matter for the Interior Department to determine.

Concurring in this opinion, my predecessor, Secretary Schurz, by his decision of April 9, 1880 (2 C. L. L., 793), held that, in view of all the circumstances, the identity of the road was not destroyed by the deviations in construction from the located line, and that the State, was entitled to patented for granted lands. In other words, his decision was that the construction was in substantial compliance with the law, and that the State was entitled to patents for the granted lands. The entire length of road from McGregor to Sheldon is about two hundred and sixty-eight miles. Deducting from their forty-three miles, the length of that portion of the road between McGregor and Calmar, on account of which there was a waiver
80 of the benefits conferred by the grant, there remained two hundred and twenty-five miles of road conceded to be land-grant road and on account of which lands were earned and the grant became effective, provided it be held that the law was complied with in the matter of location and construction.

A full grant for 225 miles would be 1,440,000 acres, but it appears that not nearly that amount of land was found available; in fact that the company did not get more than one-fourth the quantity named.

There can, therefore, be no question here relative to excess in the case of this company as there has been shown to be in the case of the Sioux City Company.

So far as the application under consideration is concerned it has special reference to such of the 85,457.40 acres patented to the State for the benefit of the Sioux City Company and by the State withheld from the company as are within the conflicting limits of the two grants in O'Brien county and which have, under the decision of the Supreme Court (117 *U.* S., 406), been awarded to the Milwaukee Company. It embraces none of the 26,017.33 — which are also a part of the said 85,457.40 acres and which have been by the governor reconveyed to the United States.

The claim of counsel for the applicants is that suit should be brought in the name of the United States to recover the legal title to the lands in said conflicting limits in O'Brien county held or claimed by the Milwaukee Company, because—

(1.) Its line of constructed road deflects from both lines of 1864 and 1869.

(2.) It unlawfully abondoned the line of 1864 and without authority made a new location in 1869, on which it could not earn any lands.

(3.) It failed and refused to make its entire line as required by law on the location of 1864, thence to Sheldon.

(4.) It has forfeited whatever right it may have had to the lands in controversy by the failure to construct and maintain as a land-grant road that portion of the line from McGregor to Calmar.

The foregoing cover substantially the reasons assigned by counsel for applicants why a judicial forfeiture should be declared.

As to the first proposition, viz., that the lands should be forfeited because of deflection from the line of location, it seems sufficient to say that, as has been indicated, the whole matter with reference to deflection was before this department and was passed upon by my predecessor, Secretary Schurz, in April, 1880 (2 C. L. L., 793). He took the opinion of the Attorney General (16 Op., 457), who said that slight deviations, "if made for the purpose of avoiding engineering obstacles which could not otherwise be avoided without *without* exaggerated expense or to remedy defects in the orignal location, that such deflections would not destroy the indentity of the road constructed with the road of definite location;" also "that the question as to whether the road constructed is or is not the road as definitely located is a question for the Interior Department to determine and one which must be largely within the discretion of the Secretary.'

Concurring in this view, the Secretary decided (2 C. L. L., 793) that the road had been constructed substantially on the line of definite location. All the facts now here were then before the Secretary, and, as his decision indicates, were by him fully understood and considered. There is no evidence of fraud or mistake.

I must therefore regard the question as *res judicata* and must decline to reopen the same.

The second charge is that the company unlawfully abandoned the line of 1864 and without authority made a new location in 1869, on which it could not earn any lands. This charge is made because, notwithstanding a map was filed in 1864 showing the line to a point near the center of O'Brien county, a new and different location was made in 1869 westward from the east line of Clay county, upon which it is claimed by the company the road was built. The claim of applicants for suit is that there was no authority for this new location; that consequently the road built thereon was not constructed in accordance with the law and no lands were earned on account of said construction.

81

I do not think under the circumstances that this objection is well founded. At the date of the location, in 1864, the line of the Sioux City road, with which this road was to make intersection in O'Brien county, had not been located; hence it was then impossible to fix absolutely and definitely the line of the Milwaukee road through said counties to the point of junction so as to conform to the act of Congress.

The line of 1864 in said counties must therefore be regarded as a preliminary one, open and indefinite, until the line of the Sioux City road should be established, with which it was under the requirements of the statute to make a junction in O'Brien county. This seems to have been the view of the Land Department when the location of 1869 was made, for it authorized, if it did not direct, that location.

Under date of May 13, 1868, Commissioner Wilson, in a letter to the governor of Iowa, said that "in view of adjusting the grants re-

spectively it is desirable to have the true point of intersection in O'Brien county in accordance with the statute." In the same letter he requested that at an early day a map, properly authenticated, showing the true location of the line through Clay and O'Brien counties to the point of intersection with the Sioux City road be filed.

In October, 1868, the Commissioner addressed a letter to D. C. Shepherd, civil engineer in charge of the relocation, calling his attention to the requirements of the act of 1864 relative to the intersection with the Sioux City road in O'Brien county, and furnishing him a diagram of the located line to the east line of Clay county. On November 3, 1868, in reply to a request from Mr. Shepherd for further instructions and to a suggestion that the further survey of the line be delayed till the following spring, the Commissioner again wrote him, calling his attention to the requirements of the granting act as to the point of intersection and declining to consent to a delay of the survey until spring.

When the controversy between the two railroads was before the courts the exact point here presented was in issue, and Judge Love held that the location of 1869 was in accordance with the law. When the case came before the Supreme Court the decision was modified in some particulars, but as to this point it was left undisturbed.

As the line of the Sioux City road only crossed the northwest corner of O'Brien county and then ran in a southerly direction through the adjoining county on the west, the location of 1869 was clearly a necessity in order to make the junction of the two roads in O'Brien county, as required by the statute, and I can see no good reason for the conclusion that it was not made in accordance with law.

The third objection is that the company failed and refused to make its entire line, as required by law, on the location of 1864, thence to Sheldon. This objection has been practically disposed of in the consideration of the preceding propositions, and need
82 not here be further discussed except to say that had the company at any time after 1864 made a location from the terminus of the line of 1864 to the point of junction at Sheldon the agument as presented by counsel would have been just as applicable as it is to the present condition of affairs, and would have amounted to an objection to any claims of title to the lands by the company. Such location could not have been made in 1864 for the reason that it was not then known, nor could it be, that Sheldon would be a point of junction.

The last proposition to be considered is that the company has forfeited any right it may have had to the lands in controversy by the failure to construct and maintain as a land-grant road that portion of the line between McGregor and Calmar. It has already been stated that the State of Iowa by act of its legislature approved March 31, 1868, required that the McGregor Western Company, for itself and its successors and assigns, should release and waive all claim to any lands on account of the road then constructed, which

was the road from McGregor to Calmar, a distance of about forty-three miles. The claim is that because of this waiver that portion of the Milwaukee road between McGregor and Calmar is not a land-grant road. Therefore a land-grant road has not been constructed and maintained from McGregor to a point of intersection with the Sioux City road in O'Brien county, as required by the granting act, and consequently the company is not entitled to the lands in question.

The proposition that this section of forty-three miles of road is not land-grant road finds support in an opinion of the Attorney-General rendered in 1871 to that effect (13 Op., 445), the question having been referred to that officer by the Secretary of War on the refusal of the Milwaukee Company to make an abatement for the transportation over the section of road mentioned of certain quartermaster's stores. I am not without doubt as to the correctness of said holding by the Attorney General, but in no view of the question raised do I see that it affects the lands in dispute in O'Brien county. Those lands are claimed by the company on account of a portion of its road which it is not denied was constructed and is maintained as a land-grant road, with strict observance of the obligations relative to transportation. Having determined that the portion of the road in O'Brien county was constructed in compliance with the law, I must conclude, leaving out of view the forty-three miles of road between McGregor and Calmar, that the lands in question, in so far as they are now claimed by the Milwaukee Company, have been earned by it. They have been awarded to it under the decision of the Supreme Court (117 R. S., 406), and most of them have under the decree of the court been patented to the company by the State.

If, as was thought by the Attorney General, the forty-three miles at the east end of the line is not grant land, the fact remains that the remaining two hundred and twenty-five miles of the road was constructed and is maintained as a land-grant road, and it is on account of the last-mentioned portion of the road that these lands are claimed. The case would then be that the company had failed to complete and operate as land-grant road the entire line of road from McGregor to Sheldon, the point of junction with the Sioux City road.

In other words, it had only built as land-grant road two hundred and twenty-five miles on a total line of two hundred and sixty-eight miles. In this view it is in the same position as the Sioux City Company, which built its road only to Le Mars, whereas the
83 full line of grant was to Sioux City.

It has already been held that under the Supreme Court decision in Railroad *vs.* Courtwright (21 Wall., 310) and Van Wyck *vs.* Knevals (106 U. S., 360) said company has earned and is entitled to its grant for the road constructed and certified in accordance with the terms of the granting act. For the same reasons the grant must be regarded as earned along that portion of the Milwaukee road constructed, certified, and operated as a land-grant road. The company is therefore entitled to the lands in question claimed

by it and awarded to it under the decision of the Supreme Court (*supra*).

It may be here remarked that counsel claims that the patents issued by the State to the Milwaukee Company were without authority and are void, because they had been patented to the State or the Sioux City Company and not for the Milwaukee Company. On this it is sufficient to say that the conclusion of the Supreme Court was that the patents to the State named the wrong beneficiary as to those lands, and the court corrected that error by declaring the Milwaukee Company the beneficiary and entitled to the lands in question which the State held by patent for the Sioux City Company. The mandate of the highest court in the country, followed by a decree of the circuit court made pursuant thereto, I take it, furnished the governor ample authority for passing the evidence of title.

Finding, for the reason herein given, that the Milwaukee Company has earned and is entitled to all the lands in O'Brien county which have been decreed and partitioned to it under the decision of the Supreme Court (*supra*), I must decline to request the institution of suit for the recovery of title to any of said lands.

With reference to the Sioux City Company and its claims and rights, I have, for the reason assigned in the first part of this paper, concluded to request that suit be instituted in the name of the United States with a view to having declared the United States the title to 17,590.30 acres of land in odd-numbered sections in O'Brien county, Iowa, claimed by the Sioux City Company under the grant of 1864.

You will please complete the adjustment of the grant in accordance with the views herein expressed and make demand, in compliance with the requirements of section two of the act of March 3, 1887 (24 Stat., 556), upon the St. Paul and Sioux City Railroad Company and upon the State of Iowa for the relinquishment and reconveyance to the United States of the 17,590.30 acres above referred to or such quantity as the completed adjustment, in accordance with the principles herein enunciated, may show to be wrongly held by the State under patents from the United States.

If relinquishment and reconveyance be made you will return the case to this department, with your report thereon, for further action; if there be neglect or failure to so reconvey within ninety days after demand as aforesaid, you will promptly report the fact to this department and return the record, in order that the Attorney General may be requested to institute suit for the recovery of the lands in question.

I transmit herewith the application for suit filed in behalf of settlers upon the lands in question, together with the briefs filed by counsel for the respective railroad companies and by counsel for the Western Land Company, assignee of the Milwaukee Railway Company; also other papers and records applicable to the case.

Very respectfully, L. Q. C. LAMAR, *Secretary.*

84 "E."

Copy.

MAY 19, 1890.

The honorable the Secretary of the Interior.

SIR: In compliance with instructions contained in departmental circular of Nov. 2, 1887, issued under the act of Mar. 3, 1887 (24 Stat., 556), I have adjusted the grant to the State of Iowa by act of May 12, 1864 (13 Stat., 72), to aid in the construction of a railroad from a point at or near the foot of Main street, South McGregor, in a westerly direction to an intersection in O'Brien county with a road from Sioux City to the south line of the State of Minn., for which a grant was made by the same act.

The grant was of every alternate section of land designated by odd numbers for 10 sections in width on each side of the *road*, with a provision for indemnity for losses within the grant in place, to be taken from the public lands nearest the tiers of granted sections and not more than 20 miles *from* the line of road. The State accepted the grant April 20, 1866, and the road has been completed and accepted by the department. See decision of Secretary Schurz of April 9, 1880.

The line of the road was definitely located from McGregor to sec. 12, t'p 95 N., R. 35 W., *Agu.* 30, 1864; from the latter point to sec. 18, t'p 96 N., R. 38 W., Jan. 27, 1869, and from thence to a connection with the Sioux City & St. Paul railroad at Sheldon, in O'Brien county, as required by the granting act, Sept. 2, 1869.

The present owner under grant is the Chicago, Milwaukee & St. Paul Railway Company. The grant was of every alternate section of land designated by odd numbers within prescribed limits, and was therefore a grant in place. The original grantee of the State was the McGregor Western Railroad Company, and said company built the road from McGregor to Calmar, but, that company having failed to perform the conditions prescribed by the granting act, the State, *of* Feb. 27, 1868, as authorized by the congressional grant (4th section), resumed the grant, and on March 31st ensuing conferred it upon the McGregor & Sioux City Company, but provided that the grant should not be constructed as to embrace any lands for or on account of the grant; that the company should procure and file with the secretary of the State of Iowa a full, absolute, and effective waiver, release, and surrender of all claims, right, or interest or any pretended claim, right, or interest by the McGregor Western Company, its successors or assigns, in or to any lands under the act of May 12, 1864, for or on account of any railroad already built.

The waiver, release, and surrender as aforesaid were subsequently obtained by the McGregor & Sioux City, afterwards the McGregor & Missouri River, Company and filed as required. The present owner of the grant under the act of the State legislature approved Feb. 27, 1878, became owner, by purchase from the McGregor West-

ern Company, of that portion of the road between McGregor & Calmar.

Certain transportation over this part of the road for the quartermaster's department of the army having been performed, the quartermaster general demanded a rebate from the charges on the
85 ground that the road was a land-grant road. The company denied that it was a land-grant road, and, the matter having been presented to the Attorney General, he, on the 14 July, 1871 (13 Att'y Gen., 445), delivered an opinion that the road between McGregor and Calmar was not a land-grant road.

The area of the grant—that is, of the odd-numbered sections within the 20-mile limits between McGregor and Calmar—is 238,832.89 acres, and the area of that portion thereof between Calmar and Sheldon, the western terminus, is 1,315,964.26 acres.

The grant is decreased by a moiety of the lands lying within the common ten-mile limits of this road and the Sioux City & St. Paul road, which is 35,667.04. Assuming that the company is not entitled to any lands east of Calmar, the net area of the grant would be 1,280,297.22 acres. There have been patented to the company within the granted limits 170,115.12 acres; awarded to the company by the court in its contest with the Sioux City & St. Paul Company 58,340.94 acres; vacant and subject to the grant, 2,074.18 acres; selected by the company, 459.30 acres, and declaratory statement on land otherwise vacant, 4,182.78 acres, making 235,172.32 acres, and leaving a net loss of the grant within the granted limits of 1,045,124.90 acres.

Within the indemnity limits there have been patented to the company 153,724.89 acres and awarded to it by the court in contest aforesaid 21,094.46 acres, making 174,899.35 acres, and leaving a balance due the company as indemnity of 870,225.55 acres. As to the lands which are charged vacant and subject to the grant, it is probably that the acreage given is not now correct, as this adjustment was made up some time ago, but it is not thought necessary to make a re-examination of the grant at this time, as it will not affect the question under consideration, there being so large a deficiency in the company's grant.

Very respectfully,

(Signed) LEWIS A. GROFF,
Commissioner.

(Endorsed:) No. 104. Equity. Circuit court of the United States for the northern district of Iowa, western division. United States *vs.* Sioux City — St. Paul Railway Company & others. Agreed statement of facts. Filed May 5, 1891. A. J. Van Duzee, clerk.

86 *Replication of Ben. Olson et al., Complainants in Cross-bill, to the Answer of the Chicago, Milwaukee & St. Paul R'y Company.*

In the Circuit Court of the United States, Northern District of Iowa, Western Division.

BEN. OLSON *et al.*
vs.
THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY *et al.*

These repliants, saving and reserving unto themselves now and at all times hereafter all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiency of said answer, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replyed unto by these replyants; without this, in any other manner or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or defended, is true; all which matters and things these replyants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and further pray as in and by their said bill they have already prayed.

JOY, HUDSON, CALL & JOY,
Attorneys for Complainants in Cross-bill.

WM. L. JOY, *Of Counsel.*

STATE OF IOWA, *Woodbury County,* } *ss:*

I, Wm. L. Joy, one of the attorneys for complainants in said cross-bill, on oath do depose and say that the matters and things in the foregoing replication stated are true and correct, as I verily believe.

WM. L. JOY.

The foregoing affidavit was subscribed and sworn to before me, Chas. D. Linsley, a notary public in and for Woodbury county, Iowa, by Wm. L. Joy, at my office, in Sioux City, Iowa, on this 5th day of May, 1891.

[SEAL.] CHAS. D. LINSLEY,
Notary Public in and for Woodbury County, Iowa.

(Endorsed:) No. 104. Equity. In U. S. circuit court. Ben. Olson *et al. vs.* Milwaukee & St. Paul R'y Co. *et al.* Replicatio-. Original. Filed May 5th, 1891. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

87 And afterwards, to wit, on the 1st day of June, A. D. 1891, there was filed in the office of the clerk of said court in said

cause an opinion of the court by Shiras, judge; which opinion is in the words and figures following, to wit:

88 In United States Circuit Court in and for Northern District of Iowa, Western Division, May Term, 1891.

UNITED STATES
vs.
SIOUX CITY AND ST. PAUL R'Y COMPANY, CHICAGO, MILWAUKEE & ST. PAUL R'Y COMPANY, *et al.* } Equity.

Bill in equity to adjust certain land grants and cross-bills on behalf of the C., M. & St. P. R'y Company and certain settlers upon the lands in dispute.

W. H. H. Miller, Attorney General.
E. C. Hughes, special assistant dist. att'y, for complainant.
John W. Carey, for C., M. & St. Paul R'y Co.
W. L. Joy, for the settlers.

SHIRAS, *Judge:*

The original bill in this cause was filed for the purpose of adjusting the rights of the Sioux City and Saint Paul R'y Company under the land-grant act of May 12, 1864.

A hearing thereon was had and the conclusions reached are set forth in the opinion of the court reported in the 43 Fed. Rep., 617, to which reference may be made for a more full statement of the facts upon which the decree of the court proceeded.

The result of the findings upon the hearing was that the Sioux City and St. Paul Company was not entitled to hold the lands in Dickinson and O'Brien counties, in the State of Iowa, which the State of Iowa had refused to convey to that company for the reason that the company had not built the entire line of railway from Sioux City, Iowa, to the Minnesota State line, which was the object sought to be accomplished by the grant made in the act of Congress of May 12, 1864, and that for the portion of the line actually built the company had received more lands than it was legally entitled to under the terms of the grant.

Upon the announcement of the conclusion reached in that case the Chicago, Milwaukee & St. Paul R'y Company obtained leave to appear in the case and file a cross-bill for the purpose of asserting a claim to the lands in Dickinson and O'Brien counties, based upon the fact that the act of May 12, 1864, contained two grants for railroad purposes—*i. e.*, the one in aid of the line from Sioux City to the Minnesota State line and the other in aid of the line from McGregor westwardly on or near the 43 parallel of north latitude to the point of intersection with the first-mentioned line—and that the C., M. &
St. P. R'y Company, acting under the authority of the act of
89 the General Assembly of the State of Iowa approved Feb. 12, 1878, had completed the line running westwardly from McGregor and had thus become entitled to all the lands granted in aid of that line. Without going into the facts at length it is sufficient to say that the C., M. & St. P. R'y Company has established

its right to all the lands that by the provisions of the act of Congress of May 12, 1864, were granted in aid of the construction of the road running westwardly from McGregor, and, furthermore, that it has not in fact received a quantity of land equal to the total amount of the alternate odd-numbered sections within the limit of ten miles along the line of railway constructed by it.

It follows, therefore, that if the grant made in the act of 1864 in aid of the line from McGregor westward can be made applicable to the lands in dispute in O'Brien and Dickinson counties, then the title of the C., M. & St. P. Company would be made out.

What, then, is the true construction of the act of 1864 in this particular?

From the terms of that act it is entirely clear that it was the intent of Congress to subserve two distinct purposes in making the grants of land therein provided for, the one being to secure the building of a line of railway from Sioux City to the Minnesota State line, the other to secure the building of the line westwardly from McGregor.

The act does not purpose to guarantee the number of acres intended to be appropriated to either object, nor does it make a joint grant of the lands for the common purpose of securing the construction of both lines of railway as parts of one system.

Properly construed it must be held to have been the intent of Congress to grant certain lands in aid of the line from Sioux City and certain other lands in aid of the line from McGregor westward.

From the facts that these lines of railway intersect at a point in O'Brien county a question necessarily arose as to the respective rights of the two companies which had undertaken to build the lines of railway in and to the lands situated within the overlapping limits of the grants where they intersected each other.

For the purpose of determining the rights of the parties the Milwaukee Company brought suit against the Sioux City Company, and the case was finally heard before the Supreme Court of the United States, the opinion rendered being found in 117 U. S., 406.

This opinion and the decree of partition made in the circuit court in accordance therewith settled the question of title as between the companies and in effect determined what lands passed under the grant of 1864 to the Sioux City Company to aid in the building of the line from Sioux City and to the Milwaukee to aid in the building of the line from McGregor westward.

It is admitted that, under the terms of the decree rendered in that case, the lands now sought to be recovered by the Milwaukee Company were not adjudged to belong to that company, but, on the contrary, were adjudged to belong to the Sioux City Company.

The right of recovery on behalf of the Milwaukee Company in the present case is sought to be based upon the fact that upon the original bill filed in this cause it was adjudged that these
90 lands had reverted to the United States for the reason that the Sioux City Company had not built the entire line of railway from Sioux City to the Minnesota State line.

It was not, however, adjudged that these lands did not form a portion of those which by the provisions of the act of 1864 were set apart or donated in aid of the construction of the line from Sioux City.

As I construe the true effect and meaning of the decision of the Supreme Court in the partition case reported in the 117 U. S. it decided that the lands in dispute belonged to and form part of the grant made in aid of the line from Sioux City, and the fact that the Sioux City Company has not yet built the entire line and has forfeited its right to hold the lands does not make the lands a part of the independent grant in aid of the McGregor line.

The act of Congress of 1864 did not grant the lands to either of the companies by name. They were granted to the State of Iowa to aid in the construction of the named lines of railway, and were donated for a purpose and not for the benefit of a given corporation or individual person.

In effect the grant in aid of the line from McGregor westward was of the alternate odd-numbered sections not otherwise appropriated. The lands granted in aid of the Sioux City line are otherwise appropriated, and hence the grant to the McGregor line is not applicable thereto.

The fact that the Sioux City and St. Paul Company did not build the entire line from Sioux City to the Minnesota line and did not, therefore, become entitled to claim all the lands donated for the construction of that line only defeats the claim of that company to these lands.

The company has not earned them, and therefore is not entitled to them, but that does not change the purpose for which they were appropriated. It is still within the power of Congress to cause these lands to be applied to the purpose of the original grant—that is, to secure the completion of the line from Le Mars to Sioux City.

It is admitted that if that line had been completed within the time specified in the act of 1864 these lands would have belonged to the Sioux City Company.

The failure of that company to earn them gives the United States the right to reclaim them, but *if* does not change the ownership and make them part of the grant in aid of the line from McGregor.

In regard to grants of the nature of those made by the act of 1864, it has been uniformally held by the Supreme Court that they are *in præsenti*, and that unless they contain an express declaration to the contrary they are not applicable to lands which at the date of the grant are reserved or appropriated to some other purpose, and that they cannot be construed to apply to lands which after the date thereof revert to the United States and thus are added to the unappropriated public domain.

Leavenworth R. R. Co. *vs.* U. S., 92 U. S., 733.
Newhall *vs.* Snager, *ibid.*, 761.

Under the facts appearing in this cause it must be held that the lands in dispute were part of those originally appropriated by the

United States to aid in the building of the line from Sioux City.

91 Hence, without any special clause in the grant to that effect, it would nevertheless be held that by reason of the appropriation to aid in the construction of the Sioux City line these lands were excepted from the effect of the general grant in aid of the McGregor line.

The act, however, contains a clause expressly excepting from its operation all lands otherwise reserved or appropriated, and hence it follows that lands appropriated to aid in the construction of the Sioux City line are reserved from the operation of the grant in aid of the McGregor line.

Counsel for the Milwaukee R'y Company has made a very able and ingenious argument, based upon the assumption that the lands were granted by the United States to the State of Iowa; that whilst the State was a trustee it also had an interest in the lands, and that the State could, in granting the lands to the railway company, require of the companies the performance of other duties in addition to the building of the named lines of railroad, and that the State of Iowa had by the act of the General Assembly granted all of its interest, right, and title in these lands to the Milwaukee Company.

It may be true that the State in dealing with the companies proposing to undertake the building of the lines of railway in aid of which grants of land were made by the United States might contract with the companies for the doing of other acts than the building of the named line of railway, but the State had not the right or power to change the purpose for which the lands were donated, nor could it defeat the object of the grant by any contract it entered into with the railway company.

The purpose of the grant in aid of the line from Sioux City was to secure the building of that line within the time specified in the act, and the State did not have the right to misappropriate the lands and thereby defeat the object for which the lands were conveyed to the State in trust.

As between the railway companies, the decision of the Supreme Court and the decree of partition has settled the right to these lands, they being adjudged to belong to the Sioux City Company.

If the United States had not chosen to assert its right to forfeit the lands they would have remained beyond the reach of the Milwaukee Company.

The ground upon which the United States has succeeded in securing a decree of forfeiture is that the lands were donated in aid of the line from Sioux City and that the Sioux City and St. Paul Company had failed to build the entire line within the specified time, and therefore the purpose of the donation had not been fulfilled by that company. The failure of that company, however, to earn these lands cannot be deemed to be the equivalent of a regrant of them in aid of the McGregor line.

Should Congress now pass an act declaring that the forfeiture on part of the Sioux City Company was waived, and that the United

States would accept the present line as full performance on part of the railway company, and that the Sioux City Company should be held entitled to all the lands it would have earned under the original grant by building the entire line from Sioux City to the Minnesota boundary, could it be possible that the Milwaukee Company could maintain its claim to these lands in face of the decree
92 already entered?

I can see no ground upon which such a proceeding could be successfully maintained.

The difficulty with the claim on behalf of the Milwaukee Company is that that company has not a title or right to these lands, but in effect it is striving to sustain its claim by reason of the weakness of the title of the Sioux City Company.

It must be held, therefore, that the C., M. & St. P. R'y Company has failed to show any right, title, or claim to the lands in question, and that its cross-bill must be dismissed upon the merits.

A cross-bill has also been filed on behalf of numerous parties who claim to be settlers upon these lands and on whose behalf it is asserted that these lands have reverted to the United States and are open to settlement under the laws of the United States, and that the parties in question have established rights therein by entry and settlement thereon.

I shall not undertake an examination of the equities of the settlers upon the record as now presented.

When the question of the right of the United States to hold these lands against the claims of the railway companies is finally decided, then the question of the rights of the settlers may arise, but I do not think that question is properly presented in this cause.

The cross-bill on behalf of the settlers prays a decree against the railway companies only. Should the finding and decree of this court be sustained it will result in defeating the title and claim of the railway companies to the lands and the settlers will have no further concern with them.

As between the United States and the settlers no issue is presented and no decree can be entered in behalf of either party.

The cross-bill on behalf of the settlers will, therefore, be dismissed without prejudice to further proceedings in their behalf.

Upon the amended bill filed on behalf of the United States against the C., M. & St. P. R'y Company the complainant is entitled to a decree quieting the title to the lands in question as against that company.

Filed June 1, 1891.

A. J. VAN DUZEE, *Clerk.*

93 And on the 11th day of December, A. D. 1890, the same being the 10th day of the October term, 1890, of said court, the following proceedings were had in said cause, as appears of record on folio 507 of Record No. 1 of the records of said court, to wit:

THE UNITED STATES OF AMERICA
vs.
THE SIOUX CITY & ST. PAUL R. R. Co., ELIAS F. Drake, & Amherst H. Wilder, Def'ts; The Chicago, Milwaukee & St. Paul R. R. Co., Intervenors. } No. 104. Equity.

And now, this 11th day of Dec., 1890, this cause came on to be heard upon the motion of W. J. Knight, Esq., att'y for The Chicago, Milwaukee & St. Paul R. R. Co., intervenors, for an order as to manner and form of service of subpœna in chancery herein by the intervenor upon the other parties in interest in this suit, and thereupon, the court being fully advised in the premises, it is therefore ordered that service of the subpœna to plead to the cross-bill of the Chicago, Milwaukee & St. Paul Railway Company filed in this cause be made on the United States of America by sending a certified copy thereof and of the cross-bill by mail, addressed to the Attorney General of the United States, at Washington, and by sending a certified copy of said subpœna by mail, addressed to the United States district attorney for the northern district of Iowa, at Fort Dodge, and that service of said subpœna be made on the Sioux City & St. Paul Railroad Company by sending a certified copy thereof by mail, addressed to said company, at Sioux City, in this State, and that said subpœna be made returnable to the next February rules.

94 And afterwards, to wit, on the 5th & 6th days of May and 1st day of June, A. D. 1891, the same being the 1st and 2nd and 6th days of the May term, 1891, the following proceedings were had in said cause, as appears of record on folios 515, 521, & 532 of Record No. 1 of the records of said court, to wit:

THE UNITED STATES OF AMERICA
vs.
S. C. & ST. P. R. R. Co., Def'ts; C., M. & ST. P. R. R. Co., Intervenors, & Ben. Olson *et al.*, Intervenors. } No. 104. Equity.

And now, on this 5th day of May, A. D. 1891, it being the time heretofore fixed therefor, this cause came up in open court for trial upon the issues joined as between the complainant and the intervenors, who were heretofore by order of court granted the right to intervene, the complainant herein appearing by its solicitor, E. C. Hughes, Esq.; the Chicago, Milwaukee & St. Paul Railroad Company appearing by John W. Cary, Esq., and Ben. Olson *et al.* appearing by their solicitors, Joy, Hudson, Call & Joy; thereupon, with leave of court first obtained, complainant files amendment to its bill of complaint and the Chicago, Milwaukee & St. Paul Railroad Company files amended cross-bill and complainant files answer to amended cross-bill and reply; and thereupon the trial of this cause is begun, and, after the introduction of the evidence and the argument of counsel is heard in part, the further trial of this cause is postponed until 9.30 o'clock a. m. of May 6th, 1891.

THE UNITED STATES OF AMERICA
vs.
S. C. & ST. P. R. R. Co., Def'ts; C., M. & ST. P. R. R. Co., Intervenors, & Ben. Olson *et al.*, Intervenors. } No. 104. Equity.

And now, on this 6th day of May, A. D. 1891, the parties to this cause, by their attorneys, all being present, the trial of this cause is resumed, and the arguments of counsel is concluded and this cause is fully submitted to the court and taken under advisement, and it is ordered that upon the determination of this cause the decree herein be entered of record as of the May term, A. D. 1891, of this court.

95 In the Circuit Court of the United States for the Northern District of Iowa, Western Division, May Term, 1891.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE SIOUX CITY & ST. PAUL RAILROAD COMPANY, Elias F. Drake, and Amherst H. Wilder, Defendants; The Chicago, Milwaukee & St. Paul Railway Company and Ben. Olson, Peter Anderson, P. O. Kalstrom, M. F. Burk, S. B. Boyington, Otto Larson, J. T. Daniels, James L. Turman, James J. Aylward, Frank Aylward, John Booge, J. T. Hatch, E. J. Pond, Robert W. Huston, J. N. Manley, Wm. Traver, L. T. Manley, John E. Young, Wm. Cain, Samuel Hibbs, W. H. Buchanan, Chas. Gustafson, Alex. Peterson, John Peterson, E. S. Mooney, W. E. Benner, F. A. Beers, Sarah & C. W. Weaver, J. R. Hedins, John A. Sand, G. W. Watts, S. A. Wilson, Charley G. Johnson, John Ker, Gust Anderson, Daniel Behan, W. J. McCaughtry, Alfred Anderson, Christ. W. Kern, John Burton, J. P. Ostrom, C. H. Arfman, Soren Anderson, W. J. Marsh, August Wallquist, Jacob Dexson, John Penforth Kneser, M. D. Finch, J. J. Walker, Wm. R. Powers, Wm. L. Powers, W. W. Carr, David S. Calkins, T. W. Whalen, Ed. Harkins, W. H. Bilsland, John Bilsland, Andrew G. Harkins, John Eveland, James Kelly, John Kelly, J. A. Harkins, L. Mulligan, Jeremiah Mullin, Dennis Mullin, Daniel Mullin, Ezra Dockstader, James Cutsinger, Samuel Lyle, A. D. Weir, W. R. Davis, John Weir, Matthew McCabe, Thomas Burns, E. W. Farnsworth, James Griffin, A. J. McKeever, Patrick Kelly, R. P. Jones, A. G. Johnson, William Bothwell, James W. Conklin, L. H. Sawyer, Intervenors. } Decree.

Be it remembered that on this fifth day of May, A. D. 1891, this cause coming on to be heard on the bill of complaint of the United States of America, as amended, and the answer and cross-bill of the

defendant The Chicago, Milwaukee & St. Paul Railway Company and the cross-bill of Ben. Olson and others, settlers upon the lands in controversy, E. C. Hughes, Esq., appearing for the complainant, The United States; John W. Cary, Esq., appearing for defendant The Chicago, Milwaukee & St. Paul Railway Company; William L. Joy, Esq., appearing for Ben. Olson and others, complainants in said cross-bill, and the testimony having been introduced and said parties duly heard by their respective counsel, said cause was duly submitted to the court.

96 And now, on this 1st day of June, A. D. 1891, it being of the said May, A. D. 1891, term of said court the court, having examined the proofs and the briefs of counsel in said cause and being duly advised in the premises, finds for the complainant, The United States of America, and against the defendant The Chicago, Milwaukee & St. Paul Railway Company.

It is therefore ordered, adjudged, and decreed that the title to the lands hereinafter described be, and the same is hereby, established and quieted in the said complainant, The United States of America, as against the said defendant, The Chicago, Milwaukee & St. Paul Railway Company, and that said defendant be, and is hereby, barred and forever estopped to have or assert any right, title, or interest in or to said lands adverse to the title of said complainant, to wit:

Description.	Sec.	Town.	Range.	Acres.
N e q'r of n w q'r, s w q'r of n e q'r, and n w q'r of s e q'r.....	7	97	42	120.00
N w q'r of n e q'r.....	7	96	42	40.00
N w q'r of n w q'r, s e q'r of n w q'r, and s w q'r of n e q'r.....	19	96	42	116.17
W h'f of n w q'r, s e q'r of n w q'r, n w q'r of n e q'r, & w h'f of s e q'r.	7	95	42	230.41
W h'f of s w q'r, s e q'r of s w q'r, and w h'f of s e q'r.....	19	95	42	193.49
S e q'r of n w q'r.....	31	95	42	40.00
S e q'r of n e q'r & e h'f of s e q'r...	7	95	42	120.00
S h'f, s h'f of n e q'r, & s h'f of n w q'r.	9	95	42	480.00
S h'f of n e q'r, s h'f of n w q'r, and s h'f.....	11	95	42	480.00
All.....	15	95	42	640.00
All.....	17	95	42	640.00
E h'f of n e q'r & e h'f of s e q'r....	19	95	42	160.00
All.....	21	95	42	640.00
S h'f, s h'f of n w q'r, & s h'f of n e q'r.	7	95	41	451.49
All.....	3	97	42	595.60
All.....	9	97	42	640.00
All.....	17	97	42	640.00
E h'f of n e q'r & e h'f of s e q'r.....	19	97	42	160.00

Description.	Sec.	Town.	Range.	Acres.
All	25	97	42	640.00
S h'f	29	97	42	320.00
S e q'r of n e q'r & n e q'r of s e q'r.	31	97	42	80.00
S h'f	33	97	42	320.00
All	35	97	42	640.00
All	3	96	42	646.16
S h'f	5	96	42	320.00
S h'f of s e q'r	7	96	42	80.00
All	11	96	42	640.00
All	15	96	42	640.00
W h'f	17	96	42	320.00
All	23	96	42	640.00
All	29	96	42	640.00
E h'f of s e q'r	31	96	42	80.00
All	33	96	42	640.00
All	1	95	42	641.36
N h'f, s w q'r, n h'f of s e q'*e*, and s e q'r of s e q'r	5	95	42	590.82
N e q'r of n e q'r	7	95	42	40.00
N h'f of n e q'r and n h'f of n w q'r	9	95	42	160.00
97 S w q'r of s w q'r	13	97	41	40.00
E h'f of s w q'r & n e q'r of s e q'r	35	97	41	120.00
N e q'r of n w q'r	3	96	41	39.94
S e q'r of n e q'r	15	96	41	40.00
W h'f	5	95	41	318.64
N h'f of n e q'r & n h'f of n w q'r	7	95	41	150.51
S w q'r of n w q'r	7	97	40	36.50
All	23	95	42	640.00
All	27	95	42	640.00
S h'f	29	95	42	320.00
E h'f of n e q'r	31	95	42	80.00
S h'f and s h'f of n h'f	11	95	41	480.00
All	13	95	41	640.00
All	15	95	41	640.00
W h'f	19	95	41	288.76
All	23	95	41	640.00
All	25	95	41	640.00
All	27	95	41	640.00
S h'f of n w q'r and s w q'r	9	95	40	240.00
All	15	98	38	640.00
N w q'r	17	98	38	160.00

And the court further finds upon the proofs herein that the cross-bill filed herein by the defendant The Chicago, Milwaukee & St. Paul Railway Company is without equity. It is therefore ordered and adjudged that the said cross-bill be, and the same is hereby, dismissed.

It is further ordered by the court that the cross-bill of Ben. Olson and others filed herein be dismissed without prejudice.

And it is further ordered and adjudged by the court that the defendant The Chicago, Milwaukee & St. Paul Railway Company pay the costs of this hearing upon the bill of complaint as amended and the answer and cross-bill of said defendant herein, taxed at forty-one & $\frac{15}{100}$ dollars, and that due process issue therefor.

To all of which rulings, decree, and judgment the said Chicago, Milwaukee and St. Paul Railway Company at the time duly excepted, and in open court, on the day aforesaid, prayed an appeal to the Supreme Court of the United States, which was allowed, bond for costs being fixed at five hundred dollars.

O. P. SHIRAS, *Judge.*

(Endorsed:) Filed June 1, 1891. A. J. Van Duzee, clerk.

98 And on the 20th day of August, A. D. 1891, the same being the — day of the regular May term, A. D. 1891, of said court, the following proceedings were had in said cause, as appears of record on folio — of the Record No. — of said court, to wit:

UNITED STATES OF AMERICA
vs.
SIOUX CITY & ST. PAUL RAILROAD COMPANY *et al.* } No. —.

And now, on this 20th day of August, A. D. 1891, upon reading the petition of the Chicago, Milwaukee & St. Paul Railway Company, filed in said cause, praying an appeal to the Supreme Court of the United States in foregoing-entitled cause—

It is ordered by the court that the appeal be allowed as prayed for.

99 And on the 20th day of August, A. D. 1891, the Chicago, Milwaukee & St. Paul Railway Company, by its solicitor, John W. Cary, Esq., files a petition for and allowance of its appeal and assignment of errors in said cause; which said petition and assignment of errors are in the words and figures following, to wit:

Circuit Court of the United States for the Western Division of the Northern District of Iowa.

UNITED STATES OF AMERICA, Plaintiff, *vs.* SIOUX CITY & ST. PAUL RAILROAD COMPANY, ELIAS F. DRAKE, Amherst H. Wilder, and Chicago, Milwaukee & St. Paul Railway Co.	Original Suit.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY *vs.* THE UNITED STATES, SIOUX CITY & ST. PAUL RAILROAD Company, Elias F. Drake, and Amherst H. Wilder and Others.	Cross-bill.

The above-named Chicago, Milwaukee & St. Paul Railway Company, defendant in the original bill and complainant in the cross-bill, conceiving itself aggrieved by the final decree of this court entered in the above-entitled case, doth hereby appeal from said decree to the Supreme Court of the United States and prays that this its appeal may be allowed; that a transcript of the record and proceedings in this case, duly authenticated, may be sent to the Supreme Court of the United States.

August 10th, 1891.

JOHN W. CARY,
Solicitor for C., M. & St. P. R'y Co.

(Endorsed:) United States of America *vs.* Sioux City & St. Paul Railroad Company *et al.* Appeal. Filed August 20th, 1891. A. J. Van Duzee, clerk.

Circuit Court of the United States for the Western Division of Iowa, Northern District.

UNITED STATES OF AMERICA, Plaintiff, *vs.* SIOUX CITY & ST. PAUL RAILROAD COMPANY, ELIAS F. DRAKE, Amherst H. Wilder, and Chicago, Milwaukee — St. Paul Railway Company.	Original Suit.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY *vs.* 99*a* THE UNITED STATES, SIOUX CITY & ST. PAUL Railroad Company, Elias F. Drake, and Amherst H. Wilder and Others.	Cross-bill.

The above-named Chicago, Milwaukee & St. Paul Railway Company, defendant in the original bill and complainant in the cross-bill, conceiving itself aggrieved by the final decree of this court entered in the above-entitled case, doth hereby appeal from said

decree to the Supreme Court of the United States, and prays that this its appeal may be allowed, and assigns errors in said decree as follows:

1st. That by said act of Congress approved May 12th, 1884, granting lands to the State of Iowa to aid in the construction of a railroad from South McGregor, in said State, running westerly on or near the 43rd parallel of north latitude to a point of intersection with the Sioux City & St. Paul railroad, in the county of O'Brien, all of said lands mentioned and described in said cross-bill and in said decree were included in said grant, and that by an act of the legislature of the State of Iowa approved on the 27th February, 1878, all of said lands were granted and conferred upon the appellant on its completion of said railroad as provided in said act of legislature, and that said railroad was fully completed within the time specified in said act, as therein provided, and that thereby the said appellant became entitled to all of said lands.

2nd. That all of said lands were within either the granted or indemnity limits of said grant to the State of Iowa to aid in the construction of said railroad, and that by the said act of the legislature of the State of Iowa all of said lands were granted to and conferred upon the appellant, and that by the completion of said railroad within the time mentioned therein said appellant became the owner and entitled to said lands.

3rd. That no part of said lands were granted by Congress to the said defendant, Sioux City & St. Paul Railroad, but that all of the said lands were granted to the State of Iowa, to be disposed of by said State in aid of the construction of said railroads in such manner as said State of Iowa should direct, and that said Sioux City & St. Paul Railroad Company never owned or became entitled to any part or portion of said land, but that all of said lands were granted to and conferred upon the appellant on condition of its completing said railroad from McGregor to said point of junction prior to the 1st day of January, 1880, and that said appellant completed said railroad, as provided in said act, during the year 1878, and thereby became entitled to said land.

4th. That said lands described in said cross-bill and said decree were and are the property of the said appellant and not the property of the United States of America at the time said decree was made.

5th. That said decree should have been in favor of said appellant and should have granted to it said lands, as prayed in said cross-bill; and the said appellant further prays that a transcript of the record and proceedings in this case, duly authenticated, be sent to the Supreme Court of the United States.

Dated August 10th, 1891.

JOHN W. CARY,
Solicitor for Appellant.

And now, to wit, on August 20th, 1891, it is ordered that the appeal be allowed as prayed for.

O. P. SHIRAS.

99*b* (Endorsed:) United States of America *vs.* Sioux City & St. Paul Railroad Company *et al.* Assignment of errors. Filed August 20th, 1891. A. J. Van Duzee, clerk.

100 Circuit Court of the United States for the Western Division of the Northern District of Iowa.

UNITED STATES OF AMERICA, Plaintiff,
vs.
SIOUX CITY & ST. PAUL RAILROAD COMPANY, ELIAS F. DRAKE, Amherst H. Wilder, and Chicago, Milwaukee & St. Paul Railway Company. } Original Suit.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
vs.
THE UNITED STATES, SIOUX CITY & ST. PAUL RAILROAD COMPANY, Elias F. Drake, and Amherst H. Wilder and Others. } Cross-bill.

The above-named Chicago, Milwaukee & St. Paul Railway Company, defendant in the original bill and complainant in the cross-bill, conceiving itself aggrieved by the final decree of this court entered in the above-entitled case, doth hereby appeal from said decree to the Supreme Court of the United States, and prays that this its appeal may be allowed, and assigns error in said decree as follows:

1st. That by said act of Congress approved May 12th, 1884, granting lands to the State of Iowa to aid in the construction of a railroad from South McGregor, in said State, running westerly on or near the 43rd parallel of north latitude to a point of intersection with the Sioux City & St. Paul railroad in the county of O'Brien, all of said lands mentioned and described in said cross-bill and in said decree were included in said grant, and that by an act of the legislature of the State of Iowa approved on the 27th of February, 1878, all of said lands were granted and conferred upon the appellant on its completion of said railroad, as provided in said act of the legislature, and that said railroad was fully completed
101 within the time specified in said act, as therein provided, and that thereby the said appellant became entitled to all of said lands.

2nd. That all of said lands were within either the granted or indemnity limits of said grant to the State of Iowa to aid in the construction of said railroad, and that by the said act of the legislature of the State of Iowa all of the said lands were granted to and conferred upon the appellant, and that by the completion of said railroad within the time mentioned therein said appellant became the owner and entitled to said lands.

3rd. That no part of said lands were granted by Congress to the said defendant, Sioux City & St. Paul Railroad, but that all of the

said lands were granted to the State of Iowa to be disposed of by said State in aid of the construction of said railroads, in such manner as said State of Iowa should direct, and that said Sioux City & St. Paul Railroad Company never owned or became entitled to any part or portion of said land, but that all of said lands were granted to and conferred upon the appellant on condition of its completing said railroad from McGregor to said point of junction prior to the 1st day of January, 1880, and that said appellant completed said railroad, as provided in said act, during the year 1878, and thereby became entitled to said land.

4th. That said lands described in said cross-bill and said decree were and are the property of the said appellant and not the property of the United States of America at the time said decree was made.

5th. That said decree should have been in favor of said appellant and should have granted to it said lands as prayed in said cross-bill; and the said appellant further prays that a transcript of the record and proceedings in this case, duly authenticated, may be sent to the Supreme Court of the United States.

Dated August 20th, 1891.

JOHN W. CARY,
Solicitor for Appellant.

102 And now, to wit, on August 10th, 1891, it is ordered that the appeal be allowed as prayed for.

O. P. SHIRAS.

102½ [Endorsed:] United States of America *vs.* Sioux City & St. Paul Railroad Company *et als.* Assignment of errors. Filed Aug. 20, 1891. A. J. Van Duzee, clerk.

103 UNITED STATES OF AMERICA, *ss:*

To the United States of America, the Sioux City and St. Paul Railroad Company, Elias F. Drake, and Amherst H. Wilder:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the western division of the northern district of Iowa, wherein The Chicago, Milwaukee & St. Paul Railway Company is appellant and The United States of America, The Sioux City & St. Paul Railroad Company, Elias F. Drake, and Amherst H. Wilder are respondents, to show cause, if any there be, why the judgment written against said appellant, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable O. P. Shiras, judge of the circuit court of the United States for the northern district of Iowa, this 20th day of August, in the year of our Lord 1891.

O. P. SHIRAS,
United States District Judge for the Northern District of Iowa.

Due and legal service of above citation is hereby accepted this 29th August, 1891.

E. C. HUGHES,
Special Ass't U. S. Dist. Att'y.

104 S. G. W. J. H.

409—1888.

In correspondence on this subject quote the above initials and file number.

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., *August* 27, 1891.

A. J. Van Duzee, Esq., clerk U. S. courts, Dubuque, Iowa.

SIR: I beg to acknowledge the receipt of a copy of the citation issued against the United States in the case of The United States *vs.* The Sioux City & St. Paul R. R. Co. *et als.* on the writ of error to the Supreme Court sued out by the railroad company.

Very respectfully,
WM. H. TAFT,
Acting Attorney General.

104½ [Endorsed:] Citation. Filed Sept. 5th, 1891. A. J. Van Duzee, cl'k. J. H. Bolton, d'p'ty.

105 And afterwards, to wit, on the 20th day of July, A. D. 1891, there was filed in the office of the clerk of said court in said cause an appeal bond; which appeal bond is in the words and figures following, to wit:

Circuit Court of the United States for the Northern District of Iowa, Western Division.

UNITED STATES OF AMERICA, Plaintiff, *vs.* SIOUX CITY & ST. PAUL RAILROAD COMPANY, ELIAS F. DRAKE, AMHERST H. WILDER, & CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.	Original Suit.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY *vs.* THE UNITED STATES, SIOUX CITY & ST. PAUL RAILROAD COMPANY, ELIAS F. DRAKE, & AMHERST H. WILDER.	Cross-bill.

Know all men by these presents that the Chicago, Milwaukee & St. Paul Railway Company, as principal, and Roswell Miller, as security, are held and firmly bound unto the United States of

America in the above-entitled suit on its cross-bill in the sum of five hundred dollars, to be paid to the said United States of America above named and its assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our successors and heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this third day of July, A. D. 1891.

Whereas the above-bounden Chicago, Milwaukee & St. Paul Railway Company, complainant in said cross-bill, has appealed to the Supreme Court of the United States to reverse the decree made and entered on said cross-bill by the circuit court of the United States for the northern district of Iowa:

Now, therefore, the condition of this obligation is such that if the above-bounden Chicago, Milwaukee & St. Paul Railway Company shall prosecute its said appeal to effect and answer all costs and damages if it shall fail to make good its appeal, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, [SEAL.]
By ROSEWELL MILLER.
ROSWELL MILLER. [SEAL.]

Sealed and delivered in presence of—
JOHN W. CARY.

Bond approved.
O. P. SHIRAS, *Judge.*

(Endorsed:) U. S. of America *vs.* Sioux City & St. Paul R. R. Company *et al.* Bond *in* appeal. Filed July 20, 1891. A. J. Van Duzee, clerk.

106 UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, Western Division, }

I, A. J. Van Duzee, clerk of the United States circuit court in and for the northern district of Iowa, do hereby certify that the foregoing transcript contains a full, true, and complete copies of the record and proceedings in the case of United States of America, complainant, against Sioux City & St. Paul Railroad Company and others upon the petition for intervention of the Chicago, Milwaukee & St. Paul Railway Company and upon cross-bill of said Chicago, Milwaukee & St. Paul Railway Company and cross-petition of Ben. Olson and others, No. 104, equity, as full, true, and complete as the originals of the same now remain of record and on file in my office, including the opinion of the court filed therein.

I further certify that the original citation, with the proof of service endorsed thereon and assignment of errors, is hereto attached and returned herewith.

Seal Circuit Court U. S., Northern District of Iowa, Sioux City.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Sioux City, in said district, this 5th day of Sept., A. D. 1891.

A. J. VAN DUZEE,
Clerk U. S. Circuit Court, N. D. of Iowa,
By J. H. BOLTON, *Deputy.*

Cost of transcript, $49.65.
Total costs, $90.80.

Endorsed on cover: Case No. 14,844. N. Iowa C. C. U. S. No. 293. The Chicago, Milwaukee & St. Paul Railway Company, appellant, *vs.* The United States, The Sioux City & St. Paul Railroad Company, Elias F. Drake, & Amherst H. Wilder. Filed September 17, 1891.

FILED.
APR 9 1895
JAMES H. MCKENNEY, CLERK

Supreme Court of the United States

OCTOBER TERM, 1894. No. 293.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, *Appellant*,

vs.

THE UNITED STATES, THE SIOUX CITY & ST. PAUL RAILROAD COMPANY, ELIAS F. DRAKE AND AMHERST H. WILDER, *Appellees*.

Appeal from the Circuit Court of the United States for the Northern District of Iowa.

BRIEF FOR APPELLANT.

INDEX.

Statement	1	V. Common Place Limits	35
Question	23	VI. Further, as to Construction	35
Assignment of Errors	23	VII. Common Indemnity Limits	37
Same, re-stated	24	VIII. Suit 1879, Res Judicata	39
ARGUMENT:—		IX. Gov't Plea for Settlers	43
I Construction of Act Cong	25	X. Settlers, themselves	44
II. Powers of State	27	Conclusion	45
III. Views of Land Dept.	31	Original Bill, Appendix	47
IV. Iowa Grant to Appell't	31		

W. H. NORRIS, *Counsel for Appellant*,
Minneapolis, Minn.

(14,844.)

Supreme Court of the United St

OCTOBER TERM, 1894.

No. 293.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILW COMPANY, *Appellant.*

vs.

THE UNITED STATES, THE SIOUX CITY & ST. PA RAILROAD COMPANY, ELIAS F. DRAKE, A AMHERST H. WILDER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

BRIEF FOR APPELLANT.

STATEMENT.

This is an appeal by the Chicago, Milwaukee & St. Paul Railway Company, intervening defendant and complainant by a cross-bill below, from a final decree of the Circuit Court of the United States, for the Northern District of Iowa.

The original suit was brought by the United States against the Sioux City & St. Paul Railroad Company and its mortgage trustees to establish the title of the United States to [illegible] acres of land, of which 800 acres are in Dickinson County, and the residue in O'Brien County, besides other lands not [illegible] volved, to the further amount of 1,282.13 acres.

Of the said lands in Dickinson and O'Brien Counties [illegible] Appellant by cross-bill claims about 21,000; to wit, the [illegible]

acres in Dickinson County, and 20,040 acres of the quantity first mentioned in O'Brien County. Of the lands thus claimed by Appellant, 10,480 acres are in its place limits, and 10,360 acres are in its indemnity limits. All are alongside of and between the termini of its authorized and constructed railroad Somewhat differently classified, as between granted and lieu lands, each component tract claimed is also alongside of, and between the termini of the authorized and constructed railroad of the Sioux City & St. Paul Railroad Company, principal defendant in the original suit.

It may be added that the 10,480 acres in Appellant's place limits as well as 3,640 acres in its indemnity limits, or in all 14,120 acres, are also within the place limits of the Sioux City road, and that the remaining 6,720 acres in Appellant's indemnity limits are also within the Sioux City indemnity limits. These relations are displayed by a map between pages 32 and 33 of the Record.

All the lands thus in controversy, whether in the original suit or under the Appellant's cross-bill, are a part of a larger quantity long since patented to the State of Iowa under the Land Grant Act of May 12th, 1864. (Chapter LXXXIV). The United States charges that of these patented lands the Sioux City & St. Paul Railroad Company has already received from the State of Iowa, by patent, 1,288.13 acres (not described in the bill) too much for the length of road by it constructed, and that it is therefore not entitled to the 21,979.85 acres reclaimed by the original bill, and not yet conveyed by the State to that Company. This view of the rights of the United States having been sustained by the Circuit Court (43 Fed. Rep. 617), this Appellant intervened by petition, allowed to stand as an answer to the original bill (Record 1–5), and filed its cross-bill (Record 6–10), and afterwards its amended cross-bill (Record 28–32), laying claim to the said 20,840 acres.

This Appellant takes no part in the contest between the United States and the Sioux City & St. Paul Company.

Its own contention is, that if that Company is for any reason not entitled to the lands last mentioned, the United States nevertheless ought not to reclaim or recover them; but that the same and all thereof ought in that event, on every principle of equity and national good faith, to be awarded to this Appellant, as fairly earned and justly due; and that the Sioux City & St. Paul Company, by whatever tenure, or to whatever extent appearing to hold the same, or any thereof, should be required, to release or transfer, not to the United States, but as a naked,

trustee, with full notice of the rights of [illegible] cestuy que trust, to release and transfer the same [illegible] pellant.

The material facts appear in the admissions of the pl[illegible] and in an agreed statement and its accompanying [illegible] (Record 77-92), and are as follows:

1.

May 12th, 1864, Congress made a two-fold grant of l[illegible] the State of Iowa by an Act approved on that day. Th[illegible] is partially set forth in the Record at pages 23 and 24, [illegible] hibit I of the Original Bill (*which is not in the Record at p[illegible] 293, but is made an Appendix to this brief*), and is made [illegible] of the answer of the United States to the cross bill. (R[illegible] 35). The title, and the sections of that act pertinent to [illegible] case, are as follows:

CHAPTER LXXXIV.

An Act for a Grant of Lands, to the State of Iowa, in alter[illegible] Sections, to aid in the construction of a Railroad in [illegible] State:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there [illegible] and is hereby granted to the State of Iowa, for the pur[illegible] aiding in the construction of a railroad from Fort D[illegible] said state, to the south line of the State of Minnesota, [illegible] point as the said State of Iowa may select between [illegible] Sioux, and the west fork of the Des Moines River, [illegible] state for the use and benefit of the McGregor Western R[illegible] Company, for the purpose of aiding in the construc[illegible] railroad from a point at or near the foot of Main S[illegible] McGregor, in said state, in a westerly direction, by the [illegible] practicable route, on or near the forty-third parallel of [illegible] latitude, until it shall intersect the said road running [illegible] Sioux City to the Minnesota State Line, in this [illegible] O'Brien in said state, every alternate section of land [illegible] by odd numbers for ten sections in width on each [illegible] roads; but in case it shall appear that the United States [illegible] when the lines or routes of said roads are definitely [illegible] sold any section or any part thereof granted as afore[illegible] that the right of pre-emption or homestead settlement [illegible] tached to the same, or that the same *has* been reserved [illegible] United States *for any purpose whatever*, then it shall be [illegible] of the Secretary of the Interior to cause to be selected, [illegible] purposes aforesaid, from the public lands of the United [illegible] nearest to the tiers of sections above specified, so many [illegible] in alternate sections, or parts of sections, designated [illegible] numbers, as shall be equal to such lands as the United [illegible] have sold, reserved, or otherwise appropriated, [illegible] the right of homestead settlement or pre-emption [illegible]

as aforesaid, which lands thus indicated by odd numbers and sections, by the direction of the Secretary of the Interior, *shall be held by the State of Iowa* for the uses and purposes aforesaid: *Provided*, That the lands so selected shall in no case be located more than twenty miles from the lines of said roads. *Provided, further*, That any and all lands *heretofore reserved* to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement or other purpose whatever, be, and the same are *hereby reserved* and excepted from the operation of this act, except so far as it may be found necessary to locate the routes of said roads through such reserved lands, in which case the right of way shall be granted, subject to the approval of the President of the United States.

SEC. 3. *And be it further enacted*, That the lands hereby granted shall be subject to the disposal of the legislature of Iowa, for the purposes aforesaid and no other. And the said railroads shall be and remain public highways for the use of the government of the United States, free of all toll or other charges upon the transportation of any property or troops of the United states.

SEC. 4. *And be it further enacted*, That the lands hereby granted shall be disposed of by said state, for the purposes aforesaid only, and in manner following namely: When the governor of said state shall certify to the Secretary of the Interior that any section of ten consecutive miles of either of said roads is completed in a good, substantial and workmanlike manner as a first class railroad, then the Secretary of the Interior shall issue to the state, patents for one hundred sections of land for the benefit of the road having completed the ten consecutive miles as aforesaid. When the governor of said state shall certify that another section of ten consecutive miles shall have been completed as aforesaid, then the Secretary of the Interior shall issue patents to said state in like manner, for a like number; and when certificates of the completion of additional sections of ten consecutive miles of either of said roads are, from time to time, made as aforesaid, additional sections of lands shall be patented as aforesaid, until said roads, or either of them, are completed, when the whole of the lands hereby granted shall be patented to the state for the uses aforesaid and none other: *Provided*, That if the said McGregor Western Railroad Company, or assigns, shall fail to complete at least twenty miles of its said road during each and every year from the date of its acceptance of the grant provided for in this act, then the state may resume said grant, and so dispose of the same as to secure the completion of a road on said line and upon such terms, within such time as the state shall determine: *Provided further*, That if the said roads are not completed within ten years from their several acceptance of this grant, the said lands hereby granted and not patented shall revert to the State of Iowa for the purpose of securing the completion of the said roads within such time, not to exceed five years, and upon such terms as the state shall determine:

And provided further, That said [illegible]
be disposed of or encumbered [illegible]
under the provisions of this act [illegible]
complete said roads within five [illegible]
said, then the said lands undisposed of [illegible]
to the United States.

SEC. 5. *And be it further enacted*, That [illegible]
ernor of the said State of Iowa shall [illegible]
with the Secretary of the Interior, [illegible]
of said roads, then it shall be the duty of the [illegible]
Interior to withdraw from market the lands [illegible]
provisions of this act.

2.

August 26, 1864, the McGregor Western filed its map of [illegible]
cation, and September 8, 1864, the Land Department [illegible]
withdrawn the odd numbered sections within twenty miles [illegible]
the line shown by that map. (Record 83).

3.

April 3, 1866, the State of Iowa accepted the grant, and [illegible]
transferred to the Sioux City & St. Paul Company [illegible]
it which was made in aid of the road from Sioux City [illegible]
Minnesota line. That act is pleaded at page 24 of the Record, [illegible]
is made Exhibit 2 of the Original Bill, and made part of the [illegible]
answer of the United States to the cross-bill. (Record 89).
Its material sections are as follows:

(CHAPTER 134.)

An Act to accept of the grant and carry into execution the Trust conferred upon the State of Iowa, by an Act of Congress entitled "An Act for a grant of lands to the State of Iowa in alternate sections, to aid in the construction of a railroad in said State."

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That the lands, rights, powers and privileges conferred upon the State of Iowa by the Act of Congress entitled "An Act for a grant of land to the State of Iowa in alternate sections, to aid in the construction of a railroad in said State of Iowa, approved May 12, 1864, be, and the same are hereby accepted upon the terms, conditions and restrictions contained in said Act of Congress.

SEC. 2. That so much of the lands, interests, rights, powers and privileges, as are or may be granted and conferred by pursuance of the Act of Congress aforesaid, for the purpose of aiding in the construction of a railroad from Sioux City, in the said State of Iowa, to the south line of the State of Minnesota, at such point as the said State of Iowa may select between the Big Sioux and the west fork of the Des Moines River be, and

are hereby disposed of, granted and conferred upon the Sioux City & St. Paul Railroad Company, a body corporate existing under and by virtue of the laws of the State of Iowa.

SEC. 3. That said company shall locate and definitely fix the line and route of said road as soon as practicable after the passage of this Act, and shall file a map showing such line or route in the Office of the Governor of the State of Iowa, and also in the office of the Secretary of State of the State of Iowa; and it shall be the duty of the said governor, after affixing his official signature thereto, to file or cause to be filed such map in the office of the Secretary of the Interior. But the location of such line or route, however, shall be considered final only so far as to fix the limit and boundary within which lands may be selected under, and by virtue of said Act of Congress.

SEC. 6. The said company is hereby authorized and empowered to select and designate the point upon the south line of the State of Minnesota, to which the said road shall be built, between the "Big Sioux" and the "west fork" of the Des Moines Rivers, as designated in said Act of Congress.

4.

April 20th, 1866, another Act was passed by the Legislature of Iowa, which is pleaded by the cross-bill, (Record 25), is made Exhibit 3 of the Original Bill, and a part of the answer of the United States to the cross-bill. (Record 35.) Its material portions are as follows:

CHAPTER 144 (on page 189 of Session Laws, out of order.)

SEC. 1. *Be it enacted by the General Assembly of the State of Iowa*, That the lands, rights, powers, duties, and trusts, conferred upon the State of Iowa by an Act of Congress, approved July 12th, 1864, entitled, "An Act for a grant of land to the State of Iowa, in alternate sections, to aid in the construction of a Railroad in said State," are hereby accepted by said State, upon the terms, conditions and restrictions contained in said Act of Congress.

SEC. 2. Whenever any lands shall be patented to the State of Iowa, in accordance with the provisions of said Act of Congress, said lands shall be held by the State in trust for the benefit of the Railroad Company entitled to the same by virtue of said Act of Congress, and *to be deeded to said Railroad Company as shall be ordered by the Legislature of the State of Iowa*, at its next regular session, or at any session thereafter.

5.

March 24th, 1868, another act (Chapter 42) was passed, correcting the clerical error in the Act of April 20th, 1866, as to the date of the Act of Congress, so as to refer to it by its true date of May 12th, 1864, instead of July 12th, 1864. The last mentioned Act was pleaded in the cross-bill, (Record 25), is

made Exhibit 4 of the Original Bill (in Appendix to Record) and is made part of the answer of the United States to the cross-bill. (Record 35.)

6.

The line of railroad mentioned in the Act of Congress extending from Main Street, South McGregor, in a ... direction, on or near the 43rd parallel of north latitude, built and constructed by the McGregor Western ... Company to Calmar, on or before the 1st day of January, ... [Record 77 (2)].

The distance from South McGregor to Calmar is 43 miles. [Record 78 (7); Pleaded, Record 25].

7.

No lands were ever conveyed under said grant to said McGregor Western Railroad Company. [Record 78 (8); Pleaded, Record 26].

8.

February 27th, (Record says 29), 1868, the Iowa Legislature resumed the lands and rights conferred upon the McGregor Western Railroad Company under said Act of Congress by the Act approved on that date, which is pleaded at page 25 of the Record, and is made Exhibit A of the Answer of the United States to the cross-bill. (Record 35, 43.) It is as follows:

CHAPTER 16.

An Act to Resume all the Lands and Rights conferred upon the McGregor Western Railroad Company, by or under an Act of Congress approved May 12th, A. D., 1864.

WHEREAS, By an act of Congress approved May 12th, A. D., 1864, entitled "An Act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a ... road in said State" certain lands were granted to the State of Iowa, for the use and benefit of the McGregor Western ... road Company for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main Street, South McGregor, in said State, in a westerly direction, by the most practicable route, on or near the forty-third parallel of north latitude, until it shall intersect the proposed railroad running from Sioux City to the Minnesota State Line, in the County of O'Brien, in said State of Iowa, which said grant was made to and accepted by the State of Iowa, upon the conditions, restrictions and qualifications therein named; and

WHEREAS, Said act of Congress farther provides that in the event of the failure of said McGregor Western Railroad Company to build twenty miles of said road during each and every

year from the date of its acceptance of said grant, then the State may resume said grant, and so dispose of the same as to secure the completion of a road on said line; and

WHEREAS, Said McGregor Western Railroad Company has wholly failed to build said railroad as therein required, and to perform the conditions of said grant, and has forfeited all right to the benefits of said grant; now therefore,

SECTION 1 *Be it enacted by the General Assembly of the State of Iowa*, That all lands and all rights to said lands, granted or intended to be granted to the McGregor Western Railroad Company by said act, be and the same are hereby absolutely and entirely resumed by the State of Iowa, and that the same be and are as fully and absolutely vested in said State as if the same had never been granted to said railroad company.

SEC. 2. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Iowa State Register and Iowa Statesman, newspapers published at Des Moines, Iowa.

Approved February 27th, 1868.

The foregoing act of resumption of course implies a previous grant to the McGregor Western Company, not found in any law of the State; but the act of Congress itself designated the McGregor Western Company, as beneficiary, and it released all rights which it ever had, to its successor companies.

9.

March 31st, 1868, the State of Iowa granted to the McGregor & Sioux City Railway Co. the lands designed to aid in the construction of a railroad from the foot of Main Street, South McGregor, westerly to an intersection with the proposed railroad from Sioux City to the Minnesota line in the County of O'Brien, by an Act approved on that date, which is pleaded page 25 of the Record, is made Exhibit B of said answer of the United States. (Record 35, 44–6,) and (except Section 10 which provides only for immediate publication and effect). is as follows:

CHAPTER 58.

AN ACT making a Grant of Land to the McGregor & Sioux City Railway Company, or, in Case of their Failure to accept the same, to the Forty-Third Parallel Company, and to Execute the Trust conferred by Act of Congress entitled "An Act for a Grant of Land to the State of Iowa, in Alternate Sections, to aid in the Construction of a Railroad in said State," approved May 12, 1864.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, that all the lands, rights, and privileges that are granted to the State of Iowa by an act of Congress, approved

May 12, 1864, for the purpose of [illegible] railroad from a point at or near [illegible] McGregor, in said State, in a [illegible] practicable route, at or near the [illegible] latitude, until it shall intersect [illegible] from Sioux City to the Minnesota [illegible] O'Brien, in said State of Iowa, are hereby [illegible] to and upon the McGregor & Sioux City [illegible] corporation organized under the laws [illegible] *Provided*, Said Railroad Company [illegible] this act shall at all times be subject to such [illegible] and rates of tariff for the transportation of freight [illegible] gers, as may from time to time be enacted and [illegible] the General Assembly of the State of Iowa, and [illegible] ject to the conditions, limitations, restrictions and [illegible] contained in this act, and in the acts of Congress granting [illegible] lands to the State of Iowa.

SEC. 2. This grant is made upon the express condition [illegible] said railway company shall have constructed and in [illegible] order a line of railway as required by the provisions of [illegible] of Congress making said grant to the State, and of this [illegible] upon the most practicable route, on or as near as practicable [illegible] the forty-third parallel of north latitude, running within [illegible] mile of New Hampton, in Chickasaw county, and running [illegible] thence by way of, and within one mile of St. Charles City [illegible] son City, and Algona, until it shall intersect, in the county [illegible] O'Brien, in this State, the proposed railroad running from Sioux City to the Minnesota State line.

SEC. 3. This grant is conferred on the McGregor & Sioux City Railway Company on the further expressed condition [illegible] in case said company shall fail to have its railway built [illegible] completed in good running order as far west as to Chickasaw [illegible] in range fourteen, in Chickasaw county, by the first day [illegible] September, 1869, or in case said company shall fail to [illegible] and complete in good running order at least twenty miles [illegible] addition in each and every year thereafter, and the whole [illegible] said road by the first day of December, 1875, then, and in case of any such failure, or on failure to comply with any of the conditions of this act, the State of Iowa may at any time [illegible] sume all rights conferred by this act, and resume all rights [illegible] the lands hereby granted, and which may remain undisposed of to said company on account of road actually built in compliance with the terms of this act; *provided*, that if in any one year more road shall be built than is required by this act, it shall be regarded and treated as road built in the next succeeding year or years.

SEC. 4. This railway shall be constructed upon the usual gauge of other first-class railroads in this State, and shall be constructed and finished in a style and of a quality equal to the average of other first-class western railroads.

SEC. 5. The said company shall be entitled to the benefit of the selections of land already made under the grant to the State of Iowa, of lands to aid in the construction of a railroad from McGregor westward on or near the forty-third parallel, approved May 12th, 1864; and the line located under said grant shall be binding only so far as applicable to said selections.

SEC. 6. It is hereby made the duty of the Governor when ten consecutive miles of railroad has been built in accordance with the provisions of this act, to certify that fact to the Secretary of the Interior, and so on for each consecutive ten miles thereof, as the same shall be completed, and whenever the said McGregor and Sioux City Railway Company shall have completed in good running order, according to the provisions of this act, its railway to a point within one mile of St. Charles City, in Floyd County, it shall be the duty of the Governor of this State to cause patents to be issued to said railway company for one hundred and fifty sections of said land, and when the said railway company shall in like manner have completed its railway to the east line of range twenty-two, in Cerro Gordo county, then the said Governor shall cause patents to be issued to said railway company for one hundred and fifty sections of land, and when the said railway company shall in like manner have completed its railway to a point within one mile of Algona, in Kossuth county, then the Governor shall cause patents to be issued to said company for one hundred and fifty sections more of said lands; and when the said railway company shall in like manner have completed its railway to the Little Sioux river, then the said Governor shall cause patents to be issued to said company for all the balance of the lands granted for that purpose; *provided*, that the said railway company shall not convey or encumber any of said lands prior to the time it shall be entitled to patents therefor, as provided in this act; and this act shall not be so construed as to grant to said railway company, or any person or persons whomsoever, any of said lands for any railroad heretofore built.

SEC. 7. All lands embraced in said grant which were entered prior to January 1, 1866, under the homestead laws of the United States, shall be patented by the Governor of this State to the parties by whom the same were so entered, or to their heirs or grantees, upon the payment by them into the State treasury, within two years from the passage of this act, of the price of such lands as homesteads under the laws of the United States; and the money so paid for such lands shall be held for and paid over to said railway company when such lands would have been earned by said company by the extension of said road as required in this act.

SEC. 8. It is further expressly provided that if said McGregor and Sioux City Railway Company shall fail or refuse to accept of this grant upon the conditions hereby imposed, and in time and manner as herein required, the Forty-third Parallel Railway Company may accept the grant within sixty

days thereafter, and shall thereby [illegible] the rights and subject to all [illegible] tioned, to the same extent as if said [illegible] way Company had been mentioned in this act in [illegible] McGregor and Sioux City Railroad (way) Company, [illegible] the same occurs therein.

SEC. 9. The said McGregor and Sioux City Railway [illegible] pany shall assent to and accept the provisions of this [illegible] written instrument under the seal of such corporation, [illegible] signatures of the proper officers, within sixty days [illegible] passage of this act; which said acceptance shall be [illegible] office of the Secretary of State, and by him [illegible] book by him kept for the recording of articles of [illegible] And, as a further condition of this grant, and as [illegible] the acceptance hereinbefore required, and as a [illegible] the said McGregor and Sioux City Railway Company [illegible] cure and file with the Secretary of State, a full, [illegible] and effectual waiver, release, and surrender of all [illegible] or interest, or pretended claim, right, or interest, of [illegible] Gregor Western Railroad (way) Company, its successors [illegible] signs, in or to any of the lands granted to this State by [illegible] Congress approved May 12th, A. D. 1864, which claim, [illegible] or interest arises out of or is on account of any railroad [illegible] constructed: *provided*, That if the Congress of the United [illegible] shall make any additional grant of land to the State of [illegible] to aid in the construction of a railroad from McGregor [illegible] intermediate point to a point in O'Brien county, and the [illegible] McGregor and Sioux City Railway Company, their [illegible] or assigns, shall comply with all the provisions of this [illegible] shall construct their railroad to O'Brien county, in the [illegible] and time as provided in this act, then this release shall [illegible] operate to deprive said last named company, their successors or assigns of land in said contemplated additional grant [illegible] any railroad constructed on said line between McGregor and O'Brien county.

10.

April 25th, 1868, the McGregor Western Railroad Company transferred all its right to the McGregor & Sioux City Railway Company, by an instrument in writing of that date. [Record 78 (8).]

11.

The McGregor & Sioux City Railroad Company, whose name was subsequently changed to McGregor & Missouri River Railroad Company, constructed said railroad from Calmar to Algona before 1871. [Record 25, 77, (3).]

12.

February 27th, 1878, the State of Iowa resumed all the lands and rights to lands previously granted to the McGregor & Sioux City Railway company, and conferred them upon this

Appellant, by an act of its legislature approved on that day. This act is pleaded by the Appellant, (Record 25-6,) and is made Exhibit C of the Answer of the United States to amended cross bill, (Record 36 and 47-50), and (except its section 10 providing only for immediate publication and effect,) is as follows:

CHAPTER 21.

AN ACT in relation to the Lands Granted to the State of Iowa by Act of Congress, entitled, "An Act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State", approved May 12th, 1864, and to grant to and impose upon the Chicago, Milwaukee & St. Paul Railway Company, the powers and liabilities mentioned in Chapter Four (4), Title (10) of the Code.

WHEREAS, The McGregor and Sioux City Railway Company, now known as the McGregor and Missouri River Railway Company, has failed to comply with the provisions of the act of the Twelfth General Assembly of the State of Iowa, approved March 31, 1868, entitled, "An Act making a grant of land to the McGregor & Sioux City Railway Company"; therefore,

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That all lands or rights to lands heretofore granted to the McGregor and Sioux City Railway Company be, and the same are hereby absolutely and entirely resumed by the State of Iowa.

SEC. 2. That all lands and rights to lands, whether in severalty, jointly or in common, and including all lands, or rights to lands, or any interest therein or claims thereto, whether certified or not, embraced within the overlapping or conflicting limits of the two grants, or roads made and described by the act of congress hereinafter designated, granted to the State of Iowa, to aid in the construction of a railroad from a point at or near the foot of Main Street, South McGregor, in said state in a westerly direction, by the most practicable route on or near the forty-third parallel of North Latitude, until it shall intersect, in the County of O'Brien, a railroad running from Sioux City, Iowa, to the Minnesota State Line, by Act of Congress, approved May 12, 1864, and entitled "an act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said state," be and the same are hereby granted to and conferred upon the Chicago, Milwaukee & St. Paul Railway Company, which company now owns and operates the said railroad from McGregor to Algona, upon the following express terms and conditions, viz: That the last named company shall, in extension of its present line of road from McGregor to Algona, build and construct its road from Algona in Kossuth County to Emmettsburg, in Palo Alto County, and locate and establish its depot upon the grounds selected by

the McGregor & Missouri River Railway C[illegible]
by the Town plat of [illegible]
County, and located and [illegible]
(7) township (96), range [illegible]
ary, 1879; thence on the [illegible]
point of connection with the [illegible]
within one-half mile of the [illegible]
O'Brien County, on or before the [illegible]

SEC. 3. When the said railroad shall have been
constructed to Spencer in Clay County, the [illegible]
governor of the State shall [illegible]
Milwaukee & St. Paul Railway [illegible]
to lands, and all interest or [illegible]
two (2) of this act, and lying [illegible]
with the completed portion of said road,
shall have been built and constructed [illegible]
with the Sioux City and St. Paul railroad, [illegible]
the governor of this state shall [illegible]
cago, Milwaukee & St. Paul Railway [illegible]
ing lands belonging to or embraced in said grant [illegible]
their line of railroad, including all or any part [illegible]
lands in said overlapping limits, which by the terms [illegible]
of congress appertain to their line of road. [illegible]
within twenty days from the passage of this act, [illegible]
cago, Milwaukee & St. Paul Railway Company shall [illegible]
the Secretary of State a bond, to be approved by the [illegible]
in the penal sum of two hundred thousand dollars, [illegible]
for the faithful performance on its part of all the [illegible]
and conditions of this act, which sum is agreed upon [illegible]
dated damages for the failure of said company to comply [illegible]
the conditions of said act

SEC. 4. All the rights, powers and liabilities mentioned
provided in chapter four (4), title ten (10), of the Code
hereby granted to and imposed upon the said Chicago, Mil-
waukee & St. Paul Railway Company.

SEC. 5. Should the said Chicago, Milwaukee & St. Paul
Railway Company fail to file the bond or acceptance [illegible]
in section three (3) of this act within the time prescribed [illegible]
fail to build and construct its road in accordance with the [illegible]
ditions, or any of them, set out in section 2 of this act, [illegible]
thereupon all lands and rights by this act conferred shall [illegible]
vert to the State of Iowa.

SEC. 6. The said railroad shall be built upon and [illegible]
all the terms and conditions named in the act of [illegible]
March 31, 1868, granting said lands to the McGregor & [illegible]
City Railway Company, save as such terms and [illegible]
changed by this act, or are inapplicable. And [illegible]
company accepting the provisions of this act, its [illegible]
signs, shall at all times be subject to such rules [illegible]
and rates of tariff for the transportation of freights and pas-
sengers as may from time to time be enacted and provided for
by the General Assembly of the State of Iowa.

SEC. 7. In case the Chicago, Milwaukee & St. Paul Railway Company shall fail to file the bond or acceptance provided for in section 3 of this act, within the time prescribed, then any other railroad company first filing with the Secretary of State the bond aforesaid, may be, by the advice and consent of the Executive Council, substituted to all the rights and subject to all the provisions and conditions of this act conferred upon or made with reference to the Chicago, Milwaukee & St. Paul Railway Company, in which case the acceptance provided for in section 3 of this act, must be filed with the bond aforesaid.

SEC. 8. The acceptance of the provisions of this act shall be deemed a release by the company accepting the same, of all claims to unpatented lands selected for and belonging to the original grant, which have been entered and occupied in good faith, pursuant to the provisions of the pre-emption or homestead laws of the United States; and upon the making of the final proof of the occupation and improvement now required by law, and of good faith, as aforesaid, to the satisfaction of the register of the state land office, the governor is hereby authorized to execute patents for such lands to persons entitled thereto; and also all lands embraced in said grant which have been patented by the governor of this state, under the provisions of section 7, of chapter 58, of the laws of the Twelfth General Assembly; and said lands so patented are hereby expressly reserved from the operation of this act, and the title of said patentees, and their assigns, to the lands so patented, are hereby ratified and confirmed.

SEC. 9. If it shall be found that the Sioux City & St. Paul Railroad Company has constructed its road over any portion of the lands granted by this act, so much land as may be now used and appropriated for right of way and fencing at cuts for protection against snow as may be reasonably necessary, not exceeding in width one hundred feet, except at cuts, and in such case not exceeding two hundred feet in width, is hereby granted to said Sioux City and St. Paul Railroad Company, and expressly excepted from the grant to said Chicago, Milwaukee & St. Paul Railway Company, and if it shall be found that section thirteen, *town*, (township) ninety-nine, range forty-two, or any part or interest therein shall be embraced within the limits of lands granted by this act to the Chicago, Milwaukee & St. Paul Railway Company, said section being heretofore certified by the state to the Sioux City & St. Paul Railroad Company as inuring to it as a part of its land grant and said last named company having erected thereon valuable side tracks, depots, grain elevators, hotel and other improvements, and having platted a town or village thereon, sold and donated lots, and dedicated streets and parks for public uses, said section is reserved and excepted from this grant to said Chicago, Milwaukee & St. Paul Railway Company, and the title thereto is hereby confirmed to the said Sioux City and St. Paul Railroad Company on condition that said company shall execute a valid conveyance to the State of Iowa in trust for said Chicago, Mil-

waukee & St. Paul Railway Co[illegible]
state, as the gov[illegible]
quality of land [illegible]
pany, as would have [illegible]
Paul Railway Company by [illegible]
and conveyance to be approved by [illegible]
ions of this section are hereby declared to be [illegible]
tions of the grants made by this act.

13.

Said railroad was constructed from Algona to [illegible]
junction with the Sioux City & St. Paul road in O'Brien [illegible]
Iowa, in 1878, by the Chicago, Milwaukee & St. Paul Rail[illegible]
Company. [Record 86, 78 (4)].

14.

The Governor of the State of Iowa issued certificates [illegible]
different times during said construction, to the Secretary [illegible]
Interior, showing the construction of the several parts [illegible]
railroad as provided by said Act of Congress, and that [illegible]
same was fully completed from McGregor to said point of junc-
tion in O'Brien County, Iowa, in October, 1878. [Record 78 (4)].

15.

The distance from South McGregor to Calmar is 42 miles;
from Calmar to Algona 125 miles, and from Algona to Sheldon
the point of junction, 35 miles. [Record 78, (7)].

These distances combined make a total of 254 miles, instead
of the "about 225" miles of the cross-bill, (Record 26), and
"about 268" of Secretary Lamar, (Record 86, and 87),
which he regarded and treated only the 225 miles west of Cal-
mar as "land grant road," and the measure of the lands [illegible]

16.

For 225 miles of constructed land grant road the full grant
offered by the Act of Congress would have amounted to [illegible]
000 acres, [Record 26, 78 (11) and 82 90]. Instead of the
full grant for this mileage, the McGregor & Sioux City Rail-
Company, by the name of the McGregor & [illegible]
Railway Company, received under said grant 187,[illegible]
of land, and the Chicago, Milwaukee & St. Paul Railway Com-
pany received under said grant, by patents from the State of
Iowa, 219,899.46 acres of land, and set apart by [illegible]
lands 41,920 acres; making the total [illegible]
by said Companies on account of the construction of said

under said grant 899,557.72 acres of land; and no other or greater amount of land has ever been received by any or all of said companies under said grant. [Record 78, (9), 81-2 (29)]. The cross-bill, (Record 26) credits 8 acres too much.

17.

It thus appears, according to Secretary Lamar's estimates, that of lands earned under this grant the Appellant is short1,040, 442.28 acres of land, and according to the estimate of Commissioner Groff, that a balance is due the Appellant as indemnity of 870,225.55 [Record 26-27, 78 (11), 91-2].

18.

Additional to the effect of legislative resumptions from our predecessor companies, and direct legislative grant to the Appellant, it is alleged and conceded that we have completely acquired all manner of rights of those companies. [Record 26, 27 and 78 (8), (9) and (10)].

The foregoing constitute the legal and equitable status of this Appellant in relation to the State of Iowa, and in relation to the United States of America.

Meanwhile events had also proceeded under the Iowa Act of April 3rd, 1866, (3, supra), in favor of the Sioux City and St. Paul Company.

19.

In July, 1867, (Record 84) the latter Company filed its map of definite location of the north and south line of road between the Minnesota State Line and Sioux City, and in consequence of certain considerations arising from comparison of that location with the earlier location of the McGregor & Sioux City, or east and west road, filed in 1864, [Record 83, 86, (1), 87, 88], the General Land Office *required* a further map of true or actual location of the latter road through Clay and O'Brien Counties to the point of intersection with the Sioux City & St. Paul road.

In January, 1869, the McGregor & Sioux City Company accordingly filed a map of location westward through Clay County, and February 4th, 1869, all lands within twenty miles of that line were withdrawn; and September 2nd, 1869, the same Company filed an additional map, showing the location from Clay County to the point of intersection in O'Brien County, and March 15th, 1870, the lands within twenty miles

of said line were also withdrawn [illegible]
Sioux City Company having [illegible]
changed to McGregor & [illegible]
(per Secretary Lamar. Record 26, 27).

Although our record does not show it, it may [illegible]
hereafter appearing, be admitted that the [illegible]
miles of the Sioux City & St. Paul line of [illegible]
drawn reasonably, with reference to the line of [illegible]
that line as mentioned, in July, 1867.

Withdrawals were commanded and regulated by [illegible]
section of the Act of Congress.

The departures of the McGregor & Sioux City line [illegible]
authorized if not directed by the Land Department [illegible]
84, 87), have been considered and ignored by the [illegible]
the Interior (Lamar, 86-8), and by Judge Love in [illegible]
veray between the two railroads," he there holding [illegible]
of 1869 to be in accordance with the law, (Record [illegible]
Court, (117 U. S., 406) left this point of decision [illegible]
turbed.

Further, the attitude and admission of the United States [illegible]
this case, by necessary implication, concede this point [illegible]
to it, it is agreed under the allegations of the cross [illegible]
(Record 27 foot—29).

20.

Firstly. That all the lands mentioned and described [illegible]
classes 1, 2 and 3 of the amended cross bill, (Record [illegible]
ing a part of the lands mentioned and described in the [illegible]
bill of complaint, and amounting to about 21,000 acres [illegible]
situated within the granted or indemnity limits of the [illegible]
grant of the line of road, as *finally* located from McGregor [illegible]
said point of junction in O'Brien County. [Record 29, [illegible]

Secondly. That the lands mentioned in said class 1, are [illegible]
situated within the granted or ten-mile limits of said [illegible]
definitely located, and that classes 2 and 3 are within the [illegible]
demnity or twenty-mile limits of said grant; and that said lands [illegible]
mentioned in classes 1 and 2 are also within the ten-mile [illegible]
granted limits of the Sioux City and St. Paul Railroad Company; and that the lands in class 3 are within the twenty-mile or indemnity limits of the last named company. [Record (13). 28, 29].

Thirdly. That the map attached to the (amended) cross bill of the Chicago, Milwaukee & St. Paul Railway Company is a correct representation of the lands embraced within the

said Act of Congress, so far as the said lands are within the overlapping limits of said grants; that it correctly represents the lines of said railroads, as definitely located, and the lines of actual construction of said roads within the overlapping limits; and that the granted or ten-mile limit of each of said roads, and the indemnity or twenty-mile limit of each of them are correctly marked thereon, so far as the aforesaid limits of said lands overlap each other. [Record 78, (6)].

In brief explanation of the map it may be added that the lands of said class 1 are thereon represented in *pink*, crossed by black diagonals; the lands in class 2 in *blue*, crossed by black diagonals; and the lands in class 3, 800 acres thereof in northeast portion of the map, and the residue in the southwest portion thereof, in *yellow*, crossed by black diagonals.

21.

It is further agreed under the allegations of the answer of the United States to the cross-bill, (Record 38-40).

Firstly. That the list of lands appearing on page 8 of the answer of the United States to the amended cross-bill of the Chicago, Milwaukee & St. Paul Railway Company herein correctly describes that portion of the lands referred to in paragraph 21 of the original bill of complaint, which lie west of the western terminal of the McGregor Western Railroad Company, and its successor, the Chicago, Milwaukee & St. Paul Railway Company. [Record 81, (25)].

But *no land in this first list is in either* of the classes 1, 2 and 3 of the cross-bill.

Secondly. That the second list of lands described on page 8 in said last named answer correctly describes that portion of the lands set forth in paragraph 21 of the original bill of complaint, which lie within the place limits of the located line of the Sioux City & St. Paul Railway Company, and outside of the place, but within the indemnity limits of the Chicago, Milwaukee & St. Paul Railway Company. [Record 81(26)].

This "second list" corresponds with class 2 of the cross-bill (blue and black diagonals.)

Thirdly. That the list ("lists") of land set forth on page 9 of said last named answer correctly describes that portion of the lands set forth in paragraph 21 of the original bill of complaint, which lie within the joint place limits of the located lines of the Sioux City & St. Paul Railroad Company, and the Chicago, Milwaukee & St. Paul Railway Company. [Record 81(27)].

This list ("lists") corresponds to class 1 of [illegible] (pink and diagonals).

Fourthly. That the list of [illegible] said last named answer correctly [illegible] lands set forth in paragraph 21 of the [illegible] plaint herein, which lie within the [illegible] Sioux City & St. Paul Railroad [illegible] waukee & St. Paul Railway Company [illegible] limits of each of said companies. [Record [illegible]]

This "list" corresponds to class 3 of the cross-bill [illegible] low and diagonals).

22.

All of the lands described in paragraph 21 of the [illegible] of complaint herein, the paragraph setting forth [illegible] admitted, [Record 81, (25)—(28)], and included in [illegible] classes 1, 2 and 3 of the amended cross-bill of the [illegible] waukee & St. Paul Railway Company, were included [illegible] three patents issued by the United States to the [illegible] as follows: One on October 16, 1872, one on June 17, [illegible] on January 25, 1875. Copies of which patents are [illegible] length as Exhibits Nos. 11, 12 and 13, attached to the [illegible] statement of facts filed in this cause in the [illegible] tween the United States and the Sioux City & St. Paul [illegible] road Company, to which exhibits reference is hereby [illegible] [Record 79 (14)].

23.

Prior to the 27th day of February, 1878, the Sioux City & [illegible] Paul Railroad Company had completed its road from the [illegible] line of the State of Minnesota to the Town of LeMars [illegible] State of Iowa, and made their arrangements with the [illegible] Central Railroad Company for the use of its track [illegible] Mars to Sioux City, and it had received from the State of [illegible] patents for all the lands which were ever patented to it by [illegible] State under said grant. [Record 79 (15)].

24.

On the 4th day of March, 1879, a suit was instituted by [illegible] Chicago, Milwaukee & St. Paul Railway Company [illegible] Sioux City & St. Paul Railroad Company, A. H. Rice [illegible] Drake, trustees, and against John H. Gear, Governor of [illegible] of Iowa, and J. K. Powers, Register of the State Land [illegible] of the State of Iowa, in the Circuit Court of the United [illegible] for the District of Iowa. A copy of its said bill of complaint

in said cause is attached to the statement of facts filed herein between the United States and Sioux City & St. Paul Railroad Company as Exhibit No. 16 thereof, and to which reference is hereby made. [Record 79 (16)].

25.

To said bill of complaint the Sioux City & St. Paul Railroad Company, Alexander H. Rice and Elias F. Drake, trustees, filed their joint answer on the 30th day of May, 1879, a copy of which is attached to the above named statement of facts as Exhibit No. 17 thereof, and to which reference is hereby made. [Record 79 (17)].

26.

To said bill of complaint John H. Gear, Governor of the State of Iowa, and J. K. Powers, Register of the State Land Office, by J. F. McJunkin, Attorney General of the State of Iowa, filed their answer, a copy of which is attached to the aforesaid statement of facts, as Exhibit No. 18, to which reference is hereby made. [Record 80 (18)].

27.

A decree having been rendered in said cause in the said Circuit Court of the United States for the District of Iowa on the 18th day of May, 1882, an appeal was taken therefrom to the Supreme Court of the United States, by the Chicago, Milwaukee & St. Paul Railway Company, and by the Sioux City and St. Paul Railroad Company, and upon said appeal the decision of the said district (Circuit) court was reversed and the said cause remanded to said last named court for further proceedings therein, in conformity with the opinion of said Supreme Court of the United States; which opinion is reported in Vol. 117 of the United States Supreme Court Reports on page 406. [Record 80 (19).]

28.

Thereupon such further proceedings were had in conformity with the aforesaid opinion of the Supreme Court of the United States as that a decree was entered in said Circuit Court of the United States for the District of Iowa on the 21st day of May, 1886, a copy of which is attached to the answer of the United States to the amended cross-bill of the Chicago, Milwaukee & St. Paul Railway Company as Exhibit "D." thereof, and to which reference is made. [Record 80 (20).]

Said Exhibit D. appears at pages 50–66 of the Record.

[illegible]

Thereafter to-wit on the [illegible] Chicago, Milwaukee & St. Paul [illegible] Sioux City & St. Paul Railroad [illegible] their respective attorneys [illegible] partition was entered in said [illegible] cuit Court for the District of [illegible] apart in severalty the lands [illegible] rendered in said cause on the [illegible] which decree in partition is [illegible] United States to the amended cross-bill of [illegible] waukee & St. Paul Railway Company herein [illegible] thereof, and to which reference is hereby made. [illegible] (21).]

Said Exhibit "E" appears at pages 67-76 of the Record.

30.

By the said decree in partition all the lands described [illegible] paragraph 21 of the original bill of complaint herein, [illegible] classes 1, 2 and 3 of the amended cross-bill of the [illegible] Milwaukee & St. Paul Railway Company herein, were [illegible] tioned and set apart in severalty to the Sioux City & St. [illegible] Railroad Company. [Record 80 (22).].

To the entire proceedings in said suit [Record 79, (10)—[illegible] the Appellant objected, as incompetent and immaterial evidence in this cause. [Record 77, 82 (31)].

We now insist upon this objection, and that those proceedings and their results be here denied effect.

31.

In a proceeding before L. Q. C. Lamar, as Secretary of [illegible] Interior of the United States for an adjustment of [illegible] grant of May 12th, 1864, and upon an application made [illegible] said Secretary on behalf of certain settlers in the [illegible] O'Brien, Iowa, and upon which application and [illegible] said Chicago, Milwaukee & St. Paul Railway Company [illegible] the said Sioux City & St. Paul Railroad Company [illegible] each represented and heard by their respective [illegible] Secretary of the Interior refused to authorize the [illegible] any suit against the Chicago, Milwaukee & St. Paul [illegible] Company, for the recovery of any portion of the [illegible] apart to it in severalty by the aforesaid decree in partition, [illegible] said Company having claimed said land, and objected to the institution of such suit. [Record 80 (23)].

32.

All that portion of lands described in the aforesaid decree in partition as having been theretofore patented by the State of Iowa to the Sioux City & St. Paul Railroad Company which were therein set apart in severalty to the Chicago, Milwaukee & St. Paul Railway Company were by said last named Company received, and by it thereafter sold and conveyed to *bona fide* purchasers for a valuable consideration. [Record 81 (24)].

33.

After the rendition of the aforesaid decree in partition, and after the decision of the Secretary of the Interior, made on the 26th day of July, 1887, aforesaid, the said Chicago, Milwaukee & St. Paul Railway Company renewed an application theretofore made to the Governor of the State of Iowa for patents to all that portion of the lands set apart by the said decree in partition to it which had not theretofore been certified or patented by the said State of Iowa, and the Governor of the said State of Iowa thereupon, to-wit, on the 27th day of September, 1887, made and delivered to said last named Company patents to all of said last named lands; which lands said company thereupon sold and conveyed to *bona fide* purchasers for value. [Record 81 (24) *again*.]

34.

The stipulation of facts provided "that extracts from the opinion of L. Q. C. Lamar, Secretary of the Interior, and of Louis A. Groff, Commissioner of the General Land Office, to said stipulation attached as Exhibits 1 and 2, might be received and read in evidence under said stipulation. [Record 78 (11).]

The Appellant, however, objected to the proceedings before the Secretary. [Record 77, and 82 (31).]

We likewise insist upon this objection.

The Lamar opinion is upon pages 88–90 of the Record, and the Groff opinion is upon pages 91 and 92 thereof.

The stipulation of facts permits reference to the statement agreed between the United States and the Sioux City & St. Paul Railroad Company, and to the exhibits thereto annexed, [Record 82 (30)]; and also relates to the cross bill of the settlers, and the lands claimed by them—matters seemingly immaterial to the controversy in this appeal.

QUESTIONS.

Reducing to the form of a single question all the [illegible] involved in this appeal and [illegible] of Error, error to the very [illegible] of the decree of [illegible] cuit Court, the single question here is this:

If the Sioux City & St. Paul Company is for any [illegible] entitled to the 20,840 acres of land [illegible] by the [illegible] not this Appellant, as against the United States, [illegible] thereto for account of its vastly greater deficiency [illegible] lands of class 1, (pink and diagonals), because within [illegible] lant's place limits, and although also within the place [illegible] the Sioux City road; to the lands of class 2, (blue [illegible] onals) because within Appellant's indemnity limits, [illegible] though also within the place limits of the Sioux City road [illegible] to the lands of class 3, (yellow and diagonals) [illegible] within Appellant's indemnity limits, and although also [illegible] the indemnity limits of the Sioux City road.

This Appellant distinctly concedes, that it can now succeed here only in case, and to the extent to which the Sioux City & St. Paul Company shall fail to maintain its claims to the [illegible] claimed by the cross-bill, and the considerations which we are to present necessarily assume for the purposes of argument such failure of the Sioux City & St. Paul Company.

ASSIGNMENT OF ERRORS.

1st. By said Act of Congress approved May 12th, 1864, granting lands to the State of Iowa to aid in the construction of a railroad from South McGregor, in said State, running westerly on or near the 43d parallel of North latitude to a point of intersection with the Sioux City & St. Paul Railroad in the County of O'Brien, all of said lands mentioned and described in said cross-bill and in said decree were included in said grant, and that by an Act of the Legislature of the State of Iowa, approved on the 27th of February, 1878, all of said lands were granted and conferred upon the Appellant on its completion of said railroad, as provided in said act of the legislature, and that said railroad was fully completed within the time specified in said act, as therein provided, and that thereby the said Appellant became entitled to all of said lands.

2d. All of said lands were within either the granted or indemnity limits of said grant to the State of Iowa to aid in the construction of said railroad, and by the said act of the legislature of the State of Iowa all of the said lands were granted

to and conferred upon the Appellant, and that by the completion of said railroad within the time mentioned therein said Appellant became the owner and entitled to said lands.

3d. No part of said lands were granted by Congress to the said defendant, Sioux City & St Paul Railroad, but that all of the said lands were granted to the State of Iowa, to be disposed of by said State in aid of the construction of said railroads, in such manner as said State of Iowa should direct, and that said Sioux City & St. Paul Railroad Company never owned or became entitled to any part or portion of said land, but that all of said lands were granted to and conferred upon the Appellant on condition of its completing said railroad from McGregor to said point of junction prior to the 1st day of January, 1880, and that said Appellant completed said railroad, as provided in said act, during the year 1878, and thereby became entitled to said land.

4th. Said lands described in said cross-bill and said decree were and are the property of the said Appellant, and not the property of the United States of America at the time said decree was made.

5th. Said decree should have been in favor of said Appellant, and should have granted to it said lands as prayed in said cross-bill.

More briefly put, the Assignments of Error contend:

1. That Congress granted to the State of Iowa, in aid of our line of railroad, all lands claimed by our cross-bill; that the State, February 27th, 1878, conferred them conditionally upon the Appellant, which fully and seasonably fulfilled, and so became entitled to these lands.

2. That Congress and the State respectively so granted, and Appellant so earned them, *because* every tract claimed is within either the place or the indemnity limits of Appellant's line.

3. That these lands were granted, not to the Sioux City & St. Paul Company, but to the State of Iowa, in aid of the construction of *both* roads, but at the discretion of the State—that the Sioux City & St. Paul Company never owned or became entitled, and *therefore* these lands were by the State conditionally conferred upon Appellant, which fully and seasonably fulfilled, and so did become entitled.

If the foregoing propositions be sound, it follows, as asserted by the 4th assignment, that these lands were at the time of the decree below, and now are, at least in equity, the property of Appellant.

And thence it further follows [illegible] have awarded these lands as [illegible]

May we consider assignments 1, 2 and 3 together.

ARGUMENT.

I.

Construction of Act of Congress.

In and by the Act of 1864, what did Congress design [illegible] did it do—and what are its effects, as applicable to the [illegible] the Appellant?

In the language of Mr. Justice Field, (Winona &c. [illegible] Barney, 113 U. S. 618, 625), "The solution of these [illegible] "depends of course upon the construction given to [illegible] "making the grants, and they are to receive such a [illegible] "tion as will carry out the intent of Congress, however [illegible] "*it might be*, to give full effect to the language used [illegible] "*grants were by instruments of private conveyance*. To [illegible] "tain that intent we must look to the condition of the [illegible] "when the acts were passed, as well as to the purpose [illegible] "clared on their face, and read all parts of them together."

Congress by the Act of 1864 granted land to aid the [illegible] struction of a railroad from Sioux City to the Minnesota [illegible] State Line, naming in respect to *that* line no beneficiary [illegible] pany, and for the use of the McGregor Western Railroad [illegible] pany, as named beneficiary, to aid the construction of a [illegible] road from South McGregor westwardly, to an intersection with the road first mentioned, in O'Brien County.

It made both grants in *one* act, in *one* section, in *one* sentence. Why?

To the Court below it was "entirely clear that it was the in- "tent of Congress to subserve *two distinct purposes*, * * * the "one to secure the * * * line * * * from Sioux City to the Min- "nesota State Line; the other to secure the * * * line west- wardly from McGregor."

Judge Shiras further holds that the act does not "make a "joint grant * * * for *the common purpose* of securing * * * "both lines * * * as parts of one system."

If this be just interpretation, why did Congress in giving title to its mental product, itself call it "an act * * * to aid in the construction of *a railroad* in said State;" not for [illegible] grants to aid construction of railroads, but for *a grant* to aid construction of *a railroad*.

Does not this, though a dernier resort in statutory construction, indicate at the very outset of this act, singleness of grant, singleness of purpose; *because* the desideratum, what Congress wanted and was willing to pay for, was not two roads separately considered, but a *system of connected roads*, practically equivalent, as to public and national utility, to one railroad, to "*a railroad.*"

Looking into the body of the bill, do we there find concurrence with, confirmation and emphasis of the peculiarities of the *title*; or contradiction of the title, and concurrence with the opinion of the Circuit Judge?

We find that the McGregor Western road *must* be built twenty miles per annum, and to an intersection, within O'Brien County, with the other road from Sioux City to Minnesota.

Does not this look like a national want of a *system of connected railroads* in that region, and *a want of it soon*?

No other reason can be devised for making the *terminus* of the east and west road *the transverse line* of the north and south road.

This was evidently the interpretation of the Land Department, and its reason in May, 1868, for requiring the McGregor Western, and its immediate successor, the McGregor & Sioux City Company, to furnish *further maps of improved location.*

The General Land Office discovered that the original location of the McGregor Western, made years before any location of the Sioux City & St. Paul road, and before the creation of that Company, would not intersect the north and south road in O'Brien County, or anywhere else.

We therefore venture to believe that Congress had in mind, *not* two distinct purposes, but one *composite purpose*, to secure the *combination* of an east and west road with a north and south road, practically available to the government as *one road*—a combination not naturally to be expected in those early days from any single company or constructor.

We venture further to believe that this unity or singleness of purpose found natural expression in the *singleness of the title* of the Act of Congress, and by means of the consolidation of the entire grant in aid of the two parts of the one plan, in one and the same act, section of act, and sentence.

The effect of the reservation language of this act is hereafter considered under Division V concerning "~~Common Place Limits~~" "Further, as to Construction"

POWERS OF THE STATE

The Act of Congress of [illegible] land to the State of Iowa [illegible] ing in the construction of [illegible] specified, which interest [illegible] was no distinct or [illegible] Company, but the grant [illegible] pose of aiding in building a [illegible] Sioux City to the Minnesota [illegible] an intersection with the intended railroad [illegible] and Minnesota.

The act states, it is true, that the grant was [illegible] use of the McGregor Western Railroad, [illegible] said McGregor Western Railroad Company [illegible] fail to complete at least 20 miles of [illegible] and every year from the date of [illegible] provided for in this act, then the State may [illegible] and so dispose of the same as to secure the [illegible] on said line, and upon such terms, within [illegible] State shall determine."

The grant for the McGregor Western Line was [illegible] grant to the State; it was subsequently [illegible] by the State. If the McGregor Western [illegible] preferential rights as a beneficiary designated [illegible] Congress, when it failed to build and the State [illegible] it, the McGregor Western, as to this grant, [illegible] as if it never had been. It got no land, and [illegible] that it ever asked any. Certainly the Sioux City [illegible] Co., a corporation which only afterwards came into [illegible] claim no *superior* right, no right as derived directly [illegible] Act of Congress, *merely because* it was not, in the Act of Congress, named as a beneficiary.

No part or portion of these lands was granted by Congress either of said roads, or to any Company, but the grant was to the State, to aid in the construction of two lines of road constituting one combined or connected line.

The Sioux City & St. Paul Company was not [illegible] ence; it was a creature of the State subsequently [illegible] took no right, title or interest by the grant from the United States, but its interest therein arose of logical necessity [illegible]

"The greater part of our further argument is from the Circuit Court [illegible] Cary, our late General Counsel, whose sickness and death devolved this [illegible] upon a stranger to the case. The circumstances may excuse some degree of repetition.

grant from the State of Iowa; which State grant was upon condition that said road should be constructed *as provided in the granting act of the State to it;* it thus took *only what the State, by its own legislation, chose to give, and in terms gave, and under the restrictions and limitations imposed by the State.* It earned no wages, no profits, no lands, from the United States; it was payable and paid, for its construction, not by the United States, but solely by the State of Iowa.

No interest in the lands granted by Congress vested in either of the Companies by direct virtue of the Congressional grant; but the rights of such Company arose wholly from the action of the State. No title was conveyed to, or acquirable by either, except as they respectively fulfilled the condition of the grant of Congress to the State, and of the grants of the State to the Companies. Neither took title by the Act of Congress; their interests arose wholly from the action of the State alone; the State was the grantor of each Company.

2nd. This grant was of a peculiar nature. The State was not a mere naked trustee. The grant to the State was accompanied with an interest in the property; with full right and power to dispose of the same in any manner it should see fit, provided only, that it should secure the construction of the required railroads within the time specified. The only right reserved to the grantor was a right to see that the object of the grant was fulfilled. The manner and means of accomplishing that object were left wholly with the State, and perfect (in the sense of indefeasible) title to the lands, passed to the State whenever it fulfilled the object of the grant. It was not necessary that the State should confer the grant upon any company. The State in its corporate capacity might have constructed the roads, and have thereby become absolute owner of the entire grant, and it could then have disposed of the lands, for its own reimbursement, at its pleasure.

Nothing in the act of Congress required the State to secure the constructed roads, or system of roads, by two separate constructing agencies. The McGregor Western Company was the designated agency as to one line or section of the proposed system, but the State might lawfully have committed to that Company the construction of the other line, thus making it sole beneficiary of the entire grant. If the State might thus have disposed of the entire grant, how does the State's choice of an additional instrumentality for the construction of the North and South line, annul or impair the disposing power of the State,

or invest the United [illegible]
reclamation, of dimin[illegible]
all it sought of and in the [illegible]

3d. Subject perhaps, [illegible]
of the McGregor Western [illegible]
of the Congressional grant, it [illegible]
grant only one-half of those [illegible]
of to a company that would [illegible]
road, of either branch of the [illegible]
of such road or branch, the title to [illegible]
thus offered to that Company would [illegible]
virtue of the grant from the State, and the [illegible]
grant along *that* route might well remain in the [illegible]
sole benefit of the state.

Why, in such case, ought not the state to retain [illegible]
price offered by the Nation for a railroad subsidy [illegible]
In other words the grant by Congress was [illegible]
of the land to the State, on condition that the road [illegible]
completed;, and the state was at liberty to secure [illegible]
tion and completion of the roads in any manner which [illegible]
see fit to adopt.

It would have been competent for the State, (subject [illegible]
original preferential rights of the McGregor Western [illegible]
to grant all the lands in the overlapping limits [illegible]
and *no part of it to another;* or to dispose of the lands [illegible]
manner, upon condition only that the roads [illegible]
as provided in the grant from Congress, before any [illegible]
lands should pass from the State.

Again, it was competent for the state, instead of [illegible]
whole grant to a company upon condition only [illegible]
road specified, to require the construction of subsidiary [illegible]
roads, or to impose any other practicable conditions [illegible]
providing that the title to the lands should not pass [illegible]
roads specified in the grant of Congress should be [illegible]
and completed.

The state may properly by means of a grant [illegible]
other purposes than those specified therein, or in addition [illegible]
thereto. It may not dispose of the grant contrary to the [illegible]
tions, but besides those specified in the original grant [illegible]
make conditions of its own, not in contravention of [illegible]
sional conditions, and the state is at perfect liberty to [illegible]
plish, by means of a grant, any lawful purpose [illegible]
the purpose specified therein, and the United States [illegible]
more right to call the state to account for any [illegible]

may have made, or any additional thing accomplished beyond the declared purpose of the Congressional grant, than to compel a railroad company to refund a part of the proceeds of the grant, if and after these should have proved more than sufficient to pay the expenses of constructing the road. In the disposition of the grant the state is a sovereign in all respects, except that the prescribed object of the grant must be accomplished.

The Legislature of Wisconsin in 1873, in disposing of a land grant to that State, gave it to the Chicago, Milwaukee & St. Paul Railway Company upon condition, that it should proceed immediately with the construction of the land grant railroad itself, and complete the same, "and also upon the further ex-"press condition that said Company shall, within two years, "also build and complete a railroad from some point on the Mis-"sissippi River below the mouth of the Chippewa River in "Buffalo County, Wisconsin, in town 22, range 13, by the way "of the village of Durand, or Mondovia, to Eau Claire, Chip-"pewa Falls, and Menominee;" that Wisconsin Act also provided that said Milwaukee & St. Paul Railway Company, in consideration of said grant, should maintain passenger and freight depots within the City limits of the City of Hudson, and should also, within two years from the passage of the Act, "construct, complete, and put in operation a railroad from "Monroe in Green County, to Shullsburg, in the County of "La Fayette."

Neither of the last two roads was any part of the land grant road specified by Congress. (Wisconsin Session Laws of 1873, page 406.)

By chapter 10 of the Session Laws of Wisconsin for the year 1882; the legislature of that state, in making a grant of land to the Chicago, St. Paul, Minneapolis & Omaha Railway Company, required that company to pay to the Governor, within three days after the passage of said Act, for the purposes, and to be disposed of as thereinafter provided, the sum of $78,000, and to give security for the payment of an additional sum if required.

These grants are now recognized, not only as laws but as contracts; and the state is not a mere naked trustee, or subject to the rules which govern such trusts. The state is a trustee to the extent that, if it accepts the grant, it must see that it be applied to accomplish the purpose therein specified. To that extent it is answerable to the original grantor; no further. The grant is absolute to the state, to accomplish the particular

purpose specified, ... States has no further ... account for its action.

III.

VIEWS OF LAND ...

In adjusting the limits of ... grant to the State of Iowa ... it was adjusted as appertaining ... ately, but within the ... ment by the Land Depart... one road, and of other ... ing whatever in the action ... that any part of these lands ... preference to the other; but ... longed to the aggregate ...

As originally contended ... pany, it was claimed that ... ping limits belonged to ... line. This view was ... General Land Office, and ... retary of the Interior, ... Sioux City & St. Paul Company ... that *all* of the lands within ... that Company in preference to ... cause that road had been *first located*.

IV.

IOWA GRANT TO APPELLANT.

The Act of the Legislature of the State of Iowa ... February 27th, 1878, granted the whole of these lands ... Chicago, Milwaukee & St. Paul Railway Company.

The second section of that act provides that ... *rights to lands*, whether in severalty, joint or in common ... including all lands, or rights to lands, or any interest ... or claims thereto, whether certified or not, ... overlapping or conflicting limits of the two ... made and described by the act of congress ... inafter) designated, granted to the State ... construction of a railroad from a point ... Main Street, South MacGregor, ... rection, by the most practicable ...

allel of North Latitude, until it shall intersect in the County of O'Brien a railroad running from Sioux City, Iowa, to the Minnesota State Line, by act of Congress approved May 12th, 1864, *be and the same are hereby granted to and conferred upon* the Chicago, Milwaukee & St. Paul Railway Company.

That is, said act granted to the Chicago, Milwaukee & St. Paul Railway Company all lands and rights to lands, whether in severalty, jointly or in common, including all the lands, or rights to lands, or any interest therein or claims thereto, whether certified or not, *embraced within the overlapping or conflicting limits of the two grants.*

This language clearly conferred upon this company all the interest which the State of Iowa then had, whether said interest was several, joint or in common, and especially included all lands or *rights to lands, or any interest therein, or claims thereto, within overlapping limits.*

This language was sufficiently broad to confer upon this Company all the lands in the overlapping limits, if said lands *then belonged* to the State of Iowa, and *whatever claim*, right or interest therein said State *might have.* That was the intention of the Legislature in making that grant. The intention was to give to this Company not only *all the land*, but all and every the right, title, interest or claim to said lands, which the State of Iowa, at the time of the passage of that Act had.

At that very time the Sioux City & St. Paul Railroad Company had constructed *all the road which it has ever* constructed. It had then made its lease or agreement with the Illinois Central, and had abandoned all intention of constructing any additional road, or of earning any more of said grant. The ten years specified in the Act of Congress, in which it was to complete its road, had expired. That Company had *then* received from the State *all* the lands *which it has ever received* from the State under said grant.

By the terms of the Act of Congress (Section 4,) it is provided,—That if the said roads are not completed within ten years from their several acceptance of this grant, the said lands hereby granted and not patented SHALL REVERT TO THE STATE OF IOWA for the purpose of securing the completion of the said roads within SUCH TIME, not to exceed five years, and upon SUCH TERMS as the STATE SHALL DETERMINE.

At the time specified, these lands had therefore, as to the Sioux City & St. Paul Railroad Company, *reverted to the State of Iowa* by the terms of the original Act of Congress, and it was there-

fore competent for the State to re-grant them [illegible] *as it should deem proper. The title was in the State* which had been granted to the Sioux City & St. Paul [illegible] to earn said lands had expired under the terms of the Congress. No act of the State was necessary to [illegible] to said lands, for the title to the lands was then in the [illegible] the right of the Sioux City Company to earn them had [illegible] But if any action was necessary, the grant to Appellant [illegible] sufficient.

Farnsworth vs. R. R., 92 U. S., 49.
McMicken vs. U. S., 97 U. S., 204.
Pacific R. R., vs. U. S., 124 U. S., 129.

The State certainly had an interest or claim in said [illegible] and that interest or claim less or greater, was by the [illegible] efficacy of the Act of February 27th, 1878, granting the [illegible] to the Chicago, Milwaukee & St. Paul Railway Company, [illegible] veyed to that Company.

Subject only to the specific restrictions of the Act of Congress the State had, in the line, and for the accomplishment of the Congressional purpose, i. e., the construction of a railway system, *discretionary power of disposition*. The Iowa Act of February 27th, 1878, was a legitimate, judicious and effective exercise of that discretion and power. The further extension of the North and South line having been utterly abandoned and its builder having earned all of the grant which it ever could earn, and the east and west road, the longer and more important line, having been but partially built, the State anxious for its completion, by the Act of 1878 offered the entire remnant of the entire grant to the Appellant as an inducement to complete *that line*. And there then being another railway South from LeMars to Sioux City in running connection with the Sioux City and St. Paul, neither the State nor the United States had occasion to desire or offer inducement for the continuation of the Sioux City & St. Paul road South from Le Mars, and any further use of these lands for such continuation would have been utter waste upon that line, while the residue of the entire grant was vastly insufficient to compensate proportionately the completion of our line. Did the State in thus granting to us violate the granting Act, violate its duties to the United States, or in the required way, the best way, fulfill both?

It is admitted that the acts of the Legislature of the State of Iowa, as originally passed in 1866, granted the right to earn said lands in the terms of the Act of Congress, and that

the rule established by this Court would apply in that case, and each company would take a moiety of the lands, IF *each company had performed and earned the land.* This rule applies only where the Legislature in making *its* grant of the land *follows* the *exact terms* of the Act of Congress.

Here the Sioux City Company *did not perform, its* right of further acquisition was forfeit, and the State could therefore re-grant.

In this case had the grants by the State been made in the terms of the Act of Congress, and had the lands been earned by the companies respectively under such State grants, each would have taken an equal moiety of the lands in the overlapping limits. But, to repeat, the Sioux City & St. Paul Company having failed to earn the lands as provided by the Act of the Legislature, or within the time prescribed, and its right having become forfeited, it was, therefore competent for the State, *in its discretion,* to re-grant said lands, or the right to earn them, to another company, to which the lands were not inapplicable under the congressional grant; and the language used in the State grant to the Chicago, Milwaukee & St. Paul Railway Company *was used with the unmistakable intention to confer upon that Company whatever rights the state possessed in these lands;* and as *all these lands* are within the granted or idemnity limits of the McGregor line, it was competent for the legislature thus to confer the whole of said lands upon the Chicago, Milwaukee & St. Paul Company; and the language used necessarily had *that* effect, *if any effect whatever.*

The earlier acts of the legistature conferring these grants conferred only *the right to earn the land; did not confer any right to or title in the lands themselves;* only the *right to earn* the lands, and within the times specified. The *lands never became the property of either company,* until, and except as, the condition of the grant was fulfilled; each company derived right from the State alone, and acquired only such limited right, *even to earn the land,* as the State *conditionally offered* to confer; and the overlapping lands being, so far as Congress needed to care, or expressed itself as caring, equally applicable to either line of road, it was competent for the State to grant them to either builder in its discretion.

V.

COMMON PLACE LIMITS.

About one-half of the land claimed by our cross-bill is [illegible] the *common place* limits.

The Circuit Court denies them to us, apparently [illegible] "*in præsenti*" doctrine of interpretation as to place [illegible]

This reason appears to us fallacious. What [illegible] *has this doctrine to our facts?*

The *only* effect of that doctrine is *immediately to* [illegible] *title of the United States.* This grant is to the State [illegible] to *no railroad company.* The grants to particular [illegible] companies are from the STATE *alone.* The design of [illegible] was not to enrich, or even aid particular railroad [illegible] to secure for the United States a *system* of two [illegible] railroads.

Before any grant to Appellant, the Sioux City & [illegible] Company had *stopped* earning, and had been *fully* [illegible] Iowa then granted to us *whatever was left.* The lands [illegible] claim *were then left.*

What efficacy, then, had the *in præsenti* principle, in [illegible] cation to this Congressional grant, except immediately [illegible] in the State the complete title, at least to the place [illegible] the better enable the State effectually to grant to us [illegible] assumed to grant.

However just and necessary, the "*in præsenti*" doctrine [illegible] *appropriate case,* if the Sioux City & St. Paul Company [illegible] entitled to the place lands claimed by Appellant, why [illegible] that doctrine, as to Appellant, set aside by the rule, "*Cessante ratione, cessat lex?*"

VI.

FURTHER, AS TO CONSTRUCTION.

The Circuit Court further held (Record 96-7):

(1). "Under the facts appearing in this cause it must be held "that the lands in dispute were part of those originally [illegible] "priated by the United States to aid in the building of the [illegible] "from Sioux City."

(2). "Hence, without any special clause in the grant to [illegible] "effect, it would nevertheless be held that by reason of [illegible] "appropriation to aid in the construction of the Sioux [illegible] "line, these lands were excepted from the effect of the [illegible] "grant in aid of the McGregor line."

(3). "The act, however, contains a clause expressly except-"ing from its operation all lands otherwise reserved or appro-"priated, and hence it follows that lands appropriated to aid in "the construction of the Sioux City line are reserved from the "operation of the grant in aid of the McGregor line."

In these views is not the acute and able Judge in the Court below *mistaken*?

Proposition (1), as a deduction from the *in praesenti* doctrine, and prophecy of Propositions (2) and (3), confines the benefits of that doctrine to the Sioux City & St. Paul line, ignoring the simultaneousness of the grant to the McGregor line.

Proposition (2) is consequent of premise, and fulfilment of prophecy.

Proposition (3) we regard as incorrect in fact, for we find in the Act *no such* clause of *express* exception as reserved, or was capable of reserving, lands appropriated to aid the Sioux City line, from the operation of the grant in aid of the McGregor line.

May we consider, in reverse order, the reserving language of the act. Its final "hereby reserved," takes out of the field of present grant, all lands "*heretofore* reserved"—not lands *hereinbefore* reserved—but lands *heretofore* reserved—reserved *before* May 12, 1864, the date of this grant.

This reservation, then, determines nothing, alludes to nothing, as between the possible sub-grantees of the single congressional grantee—nothing as between future constructors of the two branches of the connected railroads.

This *final* reservation draws no lines, defines no bounds, protects neither branch of the present combination grant against the constructing beneficiary of the other branch; it only confirms all reservations and appropriations *of earlier date*; and protects *them* against encroachment by claimants under the present composite grant.

Can we *elsewhere* in the Act find language fairly expressive of the purpose of inter-protection, as between the two lines or branches of the present grant?

The remaining language of *supposed* reservation is: "But in "case it shall appear, that when the lines * * * of said "roads are definitely located, the United States shall have sold, "etc., or that the right of pre-emption or homestead settlement "has attached, or that the same *has been* reserved by the United "States for any purpose whatever," (in short), the Secretary shall select indemnity lands to supply the deficiency.

The unlearned interpretation of this [illegible]
would seem to be, that Congress [illegible]
tingencies, not certainties,—future [illegible]
—contingencies to arise during the [illegible]
and before the filing of the located lines,—leaving [illegible]
actual and immediate fact of the situation, [illegible]
itself, in the moment of its becoming law, in the [illegible]
the design and requirement of this Act, a [illegible]
secting roads; the intersection of which, otherwise [illegible]
of consideration as the subjects of distinct grants, or [illegible]
ized and required by separate granting acts, is to [illegible]
interference in place limits, to necessitate interference [illegible]
demnity limits.

We therefore conclude, that this provision, *not of present reservation*, but of *contingent compensation for losses* by [illegible]
be-discovered contingencies and reservations, if to be [illegible]
and remodeled into language of *present reservation*, [illegible]
part of the present grant upon one line from claimants [illegible]
the grant as for the other line; but solely protects [illegible]
claimants under this grant, upon either line, *previous* [illegible]
tions for *other* governmental objects, and rights of [illegible]
ready attached or to intervene before the filing of definite [illegible]
tions.

With all due deference, we confidently submit that the [illegible]
absence from this Act of any language of inter-limit[illegible]
inter-protection as between the two branches, lines or [illegible]
the composite grant, added to the elements of construc[illegible]
ready considered, but emphasizes and confirms our conc[illegible]
that, as between the United States and the State of Iowa, [illegible]
grant was *single*, and that the disposing power of the [illegible]
subject only to the accomplishment of the consolidated [illegible]
gressional object, a system of connected railroad, was [illegible]
tentionally left free to act just as the State did act.

VII.

COMMON INDEMNITY LIMITS.

The statutory considerations presented under the last previous head in some measure apply to the Indemnity Limits.

As to the lands claimed by our cross-bill within common [illegible]
demnity limits, it may be contended that we cannot have [illegible]
because *we have never yet selected* them, and because [illegible]
dication of indemnity rights has usually contemplated [illegible]

sidered the effect of a selection made or attempted by a Beneficiary Company, named or anticipated by the granting act, and thereby authorized to select.

But in relation to the United States and its grant here considered, no law ever required or authorized *any railroad company to select.* The duty of selection to supply deficit of place lands was by the Act of Congress devolved upon the Secretary of the Interior. This duty *he* effectually performed by the withdrawals of all lands within the twenty mile limits of both lines, *if all* available lands within those limits were needed to fill the grants of Congress.

From a pile of nine dollars, you can "select" or attempt to select ten dollars, *only by taking the nine.*

That such was and is the condition of the grant as relating to the east and west line is evident in the adjustment communication of Commissioner Groff (Record 91, 92; particularly the latter page).

But this Court (in 117 U. S., 406, 410) in the suit between the two companies, said:

"*So far as any selection* was made of these lands, it was by "the State of Iowa, *and the* LEGAL TITLE *was conveyed* to "her;"

And, (higher on same page), allusion is made to "the circum-"stances in which the title to these lands *has been placed* by the "action of the State of Iowa;"

And, (lower on same page), it is said, "There was in fact no selection"—evidently meaning by, or as between, the railroad companies.

And if it shall be here decreed that the Sioux City & St. Paul Railroad Company is not entitled to these 20,840 acres, it is upon precisely "*the circumstances in which the title to these lands "has been placed by the action of the State of Iowa*"—*the legal title in the State before the grant to us in 1878, that we now rely, and insist* that, *in that condition of want of right* in the Sioux City & St. Paul Company, the Iowa legislature had, in February, 1878, *power* to grant, and intention to grant, and *did* grant, *those very lands, to us.*

Whatever selection the Act of Congress contemplated was therefore made by the Secretary of the Interior, or by the State of Iowa, originally grantee, and, before its grant to Appellant, actual Patentee, and thus holder of perfected legal title.

And if any further ceremony or exercise of discretion was required, the Patents themselves consummated all the selection authorized and required by Congress. With *full title* in the

State, the Sioux City & St. [illegible]
paid off, all remaining lands [illegible]
cient in quantity to pay the [illegible]
structed part of the east end [illegible]
State of Iowa to offer and grant to [illegible]
tion of that line, every remaining acre of the grant.

If Judge Shiras' views of the effect of the [illegible]
Act of Congress be by possibility correct as to [illegible]
lands claimed by the cross-bill, as [illegible] within the
limits, his doctrine can have no application to the [illegible]
demnity limits, for in the latter the Congressional [illegible]
effective *in praesenti*, or until selection or actual [illegible]
the supposed applicability of the *in praesenti* doctrine [illegible]
of the lands here claimed as are in the granted [illegible]
constitutes the only distinction, as to availability, [illegible]
demnity, between the Classes 1, 2 and 3 of our [illegible]

Surely the act of 1864, and Congress in enacting it, [illegible]

NO FRAUD.

If by our course in relation to the lands in our [illegible]
limits claimed by our cross-bill, we did not, before [illegible]
consummate all necessary and possible selection thereof, [illegible]
cross-bill is itself a selection of them, which, if right [illegible]
lands, in either or both limits of the Sioux City & St. Paul [illegible]
pany, be now here denied to that Company, the decree of [illegible]
Court may well consummate, all those lands having in [illegible]
case, *eodem instanti*, ceased to be *sub judice*.

Ryan vs. R. Co., 99 U. S., 386.

VIII.

SUIT OF 1879, AND RES JUDICATA.

The decree in the suit of the Chicago, Milwaukee & St. [illegible]
Railway Company against the Sioux City & St. Paul [illegible]
Company, referred to in the pleadings, in no way affects [illegible]
disposes of the rights of the parties to these lands.

That action was by the Chicago, Milwaukee & St. Paul [illegible]
way Company against the Sioux City Company to recover [illegible]
tain lands to which the last named company had wrongfully [illegible]
acquired title belonging to the Chicago, Milwaukee & St. [illegible]
Company.

The United States was not a party to that action; that [illegible]
dealt only with equities between railway companies, and [illegible]
any question, legal or equitable, between the United States [illegible]
and Appellant.

If the decree of the Circuit Court in the present case shall be here affirmed as to the Sioux City & St. Paul Company, it follows that the suit of 1879 was handled and adjudicated upon a *false*, though then undisputed, theory as to the extent or amount of the landed rights of the Sioux City & St. Paul Company.

The decree rendered in that action and the conduct of the parties to that suit under that decree, in no way determined or affected any right of the United States, or any right or interest of the Chicago, Milwaukee & St. Paul Company as against the UnitedStates.

The matter adjudicated in that action is not *res judicata* as between these parties, and it is not competent for the United States to plead that decree or the action taken under it in bar of any right or claim of the Chicago, Milwaukee & St. Paul Railway Company in this action, or as to the lands here in question.

In order to sustain such plea, adjudication must be between the parties to the record, and equally bind both parties.

It has not yet been pretended by the counsel opposed, that the adjudication in that case of these lands to the Sioux City & St. Paul Railroad Company had any effect in vesting the title to said lands in that company *as against* the United States.

In fact, the suit of the United States to recover these lands, is in direct conflict with that adjudication as set forth in answer, and if valid to bar and foreclose the Chicago, Milwaukee & St. Paul Railway Company from claiming these lands as against the United States, it is equally effectul to bar and foreclose the right of the United States to claim these lands as against the Sioux City & St. Paul Company; had that adjudication been that the lands in question were the property of the Chicago, Milwaukee & St. Paul Railway Company, the government counsel wonld not concede it to have any effect to bar or foreclose the United States from prosecuting this suit.

That an adjudication may bar or foreclose one party, it must have the same effect upon the rights of the other party who seeks to set up such bar.

It must equally bar and foreclose each party to the controversy in which it is set up for that purpose; and to have such effect, the parties by and against whom it is claimed as a bar, should both have been parties to the suit in which the adjudication was made, and both parties should be equally bound thereby.

It is therefore submitted that the record [illegible] in that case is incompetent and inadmissible [illegible] case for any purpose whatever, and that it should [illegible] and denied influence as evidence.

2nd. The action in that case, as has been said, was [illegible] Milwaukee & St. Paul Railway Company to recover certain lands as having been wrongfully [illegible] City & St. Paul Company, and proceeded wholly upon [illegible] that the Sioux City & St. Paul Company had [illegible] the terms of the grant.

That was the legitimate matter before the Court in that [illegible] and the *only* matter in controversy therein.

It is true that the Court in that suit expressed some [illegible] to the right of the complainant therein to have conveyed certain other lands, and that certain *other* lands [illegible] to the Sioux City & St. Paul Railroad Company, but the parties for that adjudication were not before the Court, whatever was said upon that subject was merely [illegible] outside the record, gave to the complainant in that [illegible] right to demand any conveyances from the State, did not demand the State to make any conveyances to the Sioux City & St. Paul Railroad Company; and it was not competent for the Court then or there to make any such order or decree.

So far as the title to the "other lands" [illegible] those proceedings was in the State or in the United States, the time of said decree, it can only be treated as [illegible] visory, and it was so understood by the parties when [illegible] and *the complainant's action in this case* is in direct conflict [illegible] its terms and provisions; and it certainly does not lie [illegible] mouth of the complainant in one breath to insist that the decree was valid and binding, and in the next to insist that it was invalid and of no force or effect.

That decree was valid and binding *so far as the title to the lands therein described was in said Sioux City and St. Paul Railroad Company*, and that action was appropriate to compel that company to transfer title to the Chicago, Milwaukee & St. Paul Railway Company. To that extent it was a valid and binding decree as between the two railroad companies; but even as to those lands the *complainant here does not admit* that it was valid or binding as against the United States, and insists that said decree and the transfer under it by the Sioux City & St. Paul Company *did not* bar or estop the United States from claiming the title to the lands *so conveyed under said decree.*

3d. It is contended that said decree was *submitted* to by the said two railroad companies; that its terms and conditions were carried out and a conveyance made by the Sioux City and St. Paul Railroad Company in pursuance of it, and that the lands so conveyed have been *sold* by the Appellant for a valuable consideration, to *bona fide* purchasers, and that Apellant has *received* the proceeds thereof, and that for that reason the Appellant is estopped to claim the lands in question as against the United States.

It is difficult to understand upon what legal principle this proposition is based. There is no dispute anywhere in the record of these proceedings that the Appellant *was not justly entitled* to all the lands conveyed to it by the Sioux City and St. Paul Railroad Company under said decree. That company had for many years held the title to said lands and claimed to own them as against the Appellant. Appellant claimed them under said grant in pursuance of the Act of Congress and the act of the legislature, and in consideration of complete fulfilment of the terms of the grant by the Appellant.

This is not disputed. The fact that Appellant finally succeeded in obtaining, under that decree, *some* of its just rights, and received a conveyance of so much land under the decree of the Court, gave to it a perfect title to the property it so received; and the further fact alleged, that it subsequently sold *those* lands for a valuable consideration and received the compensation, is only an allegation that it did what it had a perfect right to do.

It made no agreement with the United States or with any other person, that it would not make any claim for any additional lands that it might conceive itself entitled to, and it received *no part* of said lands or anything else in *consequence* of any such agreement or undertaking.

To estop a party from claiming his just rights it is necessary to show that he has made some admission or done some act with the intention improperly to influence the conduct of another,

Reynolds vs. Lounsbury, 6 Hill (N. Y.), 534,

And that the latter has acted upon it, and will be *injured* if the party is *allowed* to gainsay it;

It must in such case be *against good conscience* and honest dealing to *allow* the party to repudiate his acts.

These are the conditions necessary to constitute an estoppel. No such facts are in this case. The Appellant never did any

act, or took any action, or made any admission, with a view to influencing the conduct of the United States. The United States in any manner acted upon any admission of the Appellant. The United States were not influenced in its action by the conduct of the Appellant.

There is no ground, therefore, to assert an estoppel.

The function of this Court in that suit was confined to the application, to the over-lapping limits, of elementary principles of interpretation. Its decision (117 U. S., 406) awarded to us the one-half interest which the granting act had given us—no more. The subsequent decree of partition of that territory gave us only what the granting act had given us—*not an acre more.*

Having thus received *so much*, we treated it as our own. But what *learned* tribunal ever held that a suit and settlement between partners, concerning only the division between them of a partial payment made by a copartnership debtor, estopped either or both to demand *of the debtor* payment of the residue?

The Appellant secured but a part of its just rights through the decree in the aforesaid suit. That decree was carried out in good faith according to its terms, and the property received by the Appellant under it was legally, rightly, properly disposed of, and there is no ground upon which the complainant can claim that it was defrauded or in any manner injured by said action or its results.

A common lawyer or common moralist might think, that no one else having earned or become entitled to this land, and it being within the bounds offered by Congress for our line of railroad, and offered to us by Iowa for completing the line, and we having on the faith of the act of Congress built the desired road, the estoppel, if any, must run in our favor, and against the United States, especially in Equity, which is the foundation of the doctrine of estoppel.

IX.

GOVERNMENT PLEA FOR SETTLERS.

The answer of the complainant to the cross-bill also sets up that certain squatters on the lands mentioned and described in said decree, made application to the Secretary of the Interior in 1886 to have him request the Attorney General to bring suit against the Chicago, Milwaukee & St. Paul Railway, and the Sioux City & St. Paul Railroad Companies, to vacate their title to the lands in question, for the benefit of such squatters, on

various grounds stated in their petition; that a hearing was had before the Secretary of the Interior, at which both railroad companies were heard by their counsel, and that the matter was fully considered by His Honor, the Secretary of the Interior; that the application as to Appellant was denied, but as to the Sioux City & St. Paul Railroad Company was granted, and (again) that after said decision the application was renewed before the Governor of the State of Iowa, for him to patent to Appellant certain lands mentioned in said decree, which was done, and that those lands were afterwards disposed of to *bona fide* purchasers.

It is difficult to understand why this matter should be set up as a defence to the cross-bill.

Stripped of all verbiage, it is simply a statement that certain squatters upon some of these lands, without any title thereto, made application to the Secretary of the Interior to have him request the Attorney General to bring suit against the Appellant and the Sioux City Company, to set aside the right and title of the Appellant to certain lands of this grant; that the matter was heard by the Secretary, and that he found that the Appellant had fully complied with the terms of the grant, and was not only entitled to all the lands which it had received, but to certain lands then held by the State of Iowa, and was entitled to some eight or nine hundred thousand acres of land in addition, provided it could be found within the limits of the grant; and that after this decision said company renewed its application to the Governor of Iowa to grant the lands then held by said State as applicable to the grant, and that some time afterwards the Governor complied with the request, and that said lands were subsequently sold by the Appellant to *bona fide* purchasers.

There is no allegation or pretence in this that Appellant did or obtained anything improper, but it appears that it stood upon its legal rights and finally succeeded in partially obtaining the lands it thus claimed, and to which it was abundantly entitled.

X.

SETTLERS, FOR THEMSELVES.

Olson and others have filed a cross-bill claiming that they made application to the proper Land Office to enter the lands in question under the homestead laws of the United States; that their application was refused; that they subsequently

squatted upon said lands and on such squatter's [illegible] in possession of the same, and they claim that they [illegible] to hold said lands as homesteads.

We do not understand that these parties are [illegible] Court. Our positions as to them are:

1st. These lands are not subject to homestead entry;

2nd. The application of said Olson and others to enter [illegible] as homesteads was refused by the proper officers of the [illegible] ernment for that reason;

3rd. These parties, with full knowledge that the lands [illegible] not subject to entry for homesteads, but that they had been appropriated for railroad purposes, entered upon said lands as trespassers, and claimed to have made certain improvements;

4th. The facts of the case show, not only that they had no right to enter upon said lands, but that their entry was not in good faith, in that they were positively informed that the lands were not subject to entry for that purpose.

Their cross-bill was properly dismissed.

IN CONCLUSION.

The facts of this Appellant's case are unique; we find in the books no parallel or analogous condition, and have no decision in point, whether for or against our contentions.

It is a case of Equitable Cognizance, in which the United States of America allege a grievance, and demand restitution and deny our claims, upon the ground that all our just requirements which might ever have reached these lands, are satisfied, and that our claim is utterly without legal or equitable merit.

The United States have not been over-reached or defrauded in respect to *the grant for our line of road.* On our line they have received everything for which they contracted. Nothing has ever been allowed, nothing is claimed, for the forty-three miles to Calmar. Of the 1,440,000 acres confessedly required for a full grant for the 225 miles thence to Sheldon, but one-fourth has been realized, and though the Appellant fulfilled all conditions fully, fairly and more than punctually, it has failed to receive, according to Secretary Lamar, over 1,000,000 acres, according to Commissioner Groff, over 870,000 acres, and the "Independent Sovereign Nation" by its law officers now denounces our claim for an additional one-seventieth of the full grant, one-fiftieth or one-fortieth of the disappointing [illegible]

cy, *as unfounded and without equity*. This 20,840 acres sought will not exceed, will still leave us vastly short of the inducement offered by the United States and by the State for our line of railroad; will not overpay our earnings in building it.

Is not this an appropriate occasion for a new precedent in equity, in line with the principles enunciated by Mr. Justice Field in the *Winona-Barney* case, which will *so far* "carry out the intent of Congress," as an honest intent to pay for what it *offered* to buy, *bought* and *received*.

If the Sioux City & St. Paul Company never had right to these lands, never earned them, never can earn them, and nevertheless, whether under color of the Patents to the State, or under color of the final decree in the partition suit of March 4, 1879, has obtained *apparent* title or interest, but in fact *no right* to the lands claimed by the cross-bill, whether within ten mile limits or twenty mile limits, it is to that extent a naked trustee, with full notice of the trust, and of the facts creating the trust, is present and subject to the jurisdiction of the Court; and if this Appellant be adjudged entitled, the Sioux City & St. Paul Company may, as such trustee, now be required to release, not to the United States, but to the Appellant, on account of its indemnity grant.

The Appellant respectfully submits that the decree appealed from should be affirmed as to the Sioux City & St. Paul Railroad Company, but reversed as to this Appellant, and the cause remanded with a direction that relief be granted to Appellant according to the prayer of its cross-bill.

W. H. NORRIS,
Counsel for Chicago, Milwaukee & St. Paul Railway Company,
Appellant,
in the place of JOHN W. CARY, deceased.

APPENDIX.

IN THE CIRCUIT COURT OF THE UNITED STATES
THE NORTHERN DISTRICT OF IOWA, W
DIVISION.

THE UNITED STATES OF AMERICA, Plaintiff, vs. THE SIOUX CITY & ST. PAUL RAILROAD COMPANY, ELIAS F. DRAKE AND AMHERST H. WILDER, Defendants.	October Term, A. D. 1 Bill of Complaint in Equity.

To the Judges of the Circuit Court of the United States:

The United States of America, an Independent Sove Nation, duly organized under its Federal Constitution, this action and bill of complaint against The Sioux & St. Paul Railroad Company, a corporation duly org under and by virtue of the laws of the State of Iowa, citizen of said State, Elias F. Drake of Minnesota and a of the State of Minnesota, and Amherst H. Wilder of M sota and a citizen of the said State of Minnesota, and there your orator complains and says:

Par. 1. That the Congress of the United States, by an act entitled, "An act for a grant of lands to the State of Iowa alternate sections, to aid in the construction of a railroad said state," and approved May 12th, 1864, provided for a g of lands to the State of Iowa for the purpose of aiding in construction of a railroad from Sioux City in said state to south line of the State of Minnesota at such point as the of Iowa might select, between the Big Sioux River, and west fork of the Des Moines River; also to said State for use of the McGregor Western Railroad Company for the pose of aiding in the construction of a railroad from a po or near the foot of Main Street in South McGregor, in State, in a westerly direction, by the most practicable on or near the forty-third parallel of north latitude should intersect the said road running from Sioux City to

Minnesota State line in the county of O'Brien, in said State, every alternate section of land designated by odd numbers for ten sections in width on each side of said road; and said act further provided that in case it should appear when the lines or routes of said roads were definitely located, that the United States had sold any section, or any part thereof included in said grant, or that any right of pre-emption or homestead settlement had attached thereto, or that the same had been reserved by the United States for any purpose whatever, then it should be the duty of the Secretary of the Interior to cause to be selected for the purpose aforesaid so much land in alternate sections or parts of sections, designated by odd numbers, as should be equal to such lands as the United States had sold, reserved, or otherwise disposed of, to be held by the State of Iowa, for the uses and purposes aforesaid, provided that the lands so selected should in no case be located more than twenty miles from the lines of said roads.

Par. 2. And in said act it was further provided, that the sections and parts of sections of land which by said grant should remain in the United States within ten miles on each side of said road should not be sold for less than double the minimum price of public lands when sold, nor should any of such lands become subject to sale at private entry until the same should have been first offered at public sale to the highest bidder at or above the minimum price aforesaid.

Par. 3. And it is further provided in said act, that the lands granted by said act should be subject to the disposal of the Legislature of Iowa for the purposes aforesaid and no other. And that the said railroads should be and remain public highways for the use of the Government of the United States free of all toll or other charges upon the transportation of any property or troops of the United States.

Par. 4. And in said act it is further provided, that the lands in said act granted should be disposed of by the State of Iowa, for the aforesaid purpose only, and in manner following, namely:—When the Governor of said State shall certify to the Secretary of the Interior that any section of ten consecutive miles of either of said roads is completed in a good, substantial and workmanlike manner, as a first-class railroad, then the Secretary of the Interior shall issue to the State, patents for one hundred sections of land for the benefit of the road having completed ten consecutive miles as aforesaid; when the Governor of said State shall certify that another section of ten consecutive miles shall have been completed as aforesaid, then the

Secretary of the Interior shall [illegible] like manner, for a like number, and [illegible] completion of additional sections of ten [illegible] either of said roads, are, from time to time, [illegible] said, additional sections of land shall be [illegible] the purposes aforesaid, and not other: Provided, [illegible] roads are not completed within ten years from the [illegible] ance of this grant, the said lands hereby granted, and [illegible] ed shall revert to the State of Iowa, for the purpose of [illegible] the completion of said roads, within such time, not [illegible] five years, and upon such terms as the state shall [illegible] and provided further, that said lands shall not in any [illegible] be disposed of or incumbered, except as the same are [illegible] under the provisions of this act, and should the State [illegible] complete said roads within five years after the ten years [illegible] said, then the said lands, undisposed of as aforesaid, [illegible] revert to the United States.

Par. 5. And in said act it was further provided, that as [illegible] as the Governor of the State of Iowa should file or cause [illegible] filed with the Secretary of the Interior, maps designating [illegible] routes of said roads, then it shall be the duty of the Secretary of the Interior to withdraw from market the lands [illegible] within the provisions of this act.

Par. 6. And in said act it is further provided, that [illegible] United States mail shall be transported on said roads [illegible] branch, under the direction of the Post Office Department [illegible] Congress may by law provide, provided, until said [illegible] fixed by law, the Postmaster General shall have power to [illegible] the rate of compensation. A copy of which said act is [illegible] nexed as "Exhibit No. 1," and to which exhibit and all other exhibits hereto attached, your orator prays leave to refer and make a part of this Bill of Complaint, the same as if the said exhibits were set forth in the body thereof.

Par. 7. That the Legislature of the State of Iowa, by an act entitled "An Act to accept of the grant and to carry into effect the trust conferred upon the State of Iowa by an act of Congress entitled "An Act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," approved April 3rd, 1866, accepted the said grant of lands so made by congress and designated the defendant, the Sioux City & St. Paul Railroad Company as the beneficiary thereof upon the terms and conditions in said act named. A copy of said act is hereto attached, marked Exhibit 2, and made a part hereof.

Par. 8. That the Legislature of the State of Iowa, by an act entitled "An Act to accept the grant of lands to the State of Iowa, made by act of Congress of May 12th, 1864, and to carry out the provisions of said act entitled 'An Act for a grant of lands to the State of Iowa. in alternate sections to aid in the construction of a railroad in said state,'" approved April 20th, 1866, repeated its acceptance of the grant of lands so made by the Act of Congress, and provided the manner in which said lands should be held and conveyed, a copy of which act is hereunto annexed and marked "Exhibit 3," and that said last act was afterwards amended by an act, approved on the 24th day of March, A. D., 1868, by correcting a clerical error therein, which last act is hereto attached as Exhibit No. 4.

Par. 9. That on the 19th day of September, 1866, the defendant, the Sioux City & St. Paul Railroad Company, filed in the office of the Secretary of State of Iowa, its written acceptance of the aforesaid grant of Congress, and of the several acts of the Legislature of the State of Iowa, upon the terms, conditions, restrictions, limitations, therein contained. A copy of said acceptance is hereto attached and marked Exhibit No. 5.

Par. 10. That on the 2nd day of April, 1867, the defendant, the Sioux City & St. Paul Railroad Company located its line of road from Sioux City, in the state of Iowa, northward to a point on the south line of the State of Minnesota, in Range Forty, West of the 5th Principal Meridian, the said line barely crossing Northwest corner of O'Brien County in said State of Iowa, and within three miles of said northwest corner; and said defendant filed a map of said location, General Land Office of the United States, on the 17th day of July, 1867, which said line is designated on the annexed diagram or plat, Exhibit No. 6.

Par. 11. That on the 26th day of August, 1867, the Hon. Joseph S. Wilson, Commissioner of the General Land Office of the United States, by an order directed to the Register and Receiver of the United States Land Office at Sioux City, Iowa, withdrew from sale and entry the public land for twenty miles on either side of said line as located by said Company and indicated by said map, filed as aforesaid.

Par. 12. That by the location of said line and the filing of said map, as aforesaid, and the withdrawal of said lands, as aforesaid, the land embraced in and covered by said Act of Congress and the said several Acts of the General Assembly of the said State of Iowa became definitely fixed and determined. And the said defendant, the Sioux City & St. Paul

Railroad Company, could not earn or acquire [illegible] said lands without first constructing its said road [illegible] line or route in the time and in accordance with the [illegible] conditions, restrictions and limitations named in said [illegible] gress and the said several Acts of the General Assembly [illegible] State of Iowa.

Par. 13. That the State of Iowa has never selected, as your orator believes, has never been requested to select any [illegible] on the south line of the State of Minnesota between the Sioux River and the West Fork of the Des Moines River [illegible] terminal points as the said line of railroad from Sioux City, Iowa, to the south line of said State, as provided in said [illegible] of Congress.

Par. 14. That the defendant, the Sioux City & St. Paul Railroad Company, has never constructed any railroad from Sioux City, Iowa, to the South line of the State of Minnesota, and has never constructed any railroad whatever along or upon the line or route located by it, as shown by the aforesaid [illegible] of definite location filed in the office of the Secretary of the Interior of the United States, July 17th, 1867, and has never completed or constructed any line of road between the above said point. And your orator avers, that, by the failure of the said defendant, The Sioux City & St. Paul R. R. Co., to construct its line of road from Sioux City, Iowa, to a point on the southern boundary line of the State of Minnesota, as provided in said act of Congress, your orator has been deprived of the benefits reserved to it by the aforesaid act of Congress. That First, it has been deprived of the use of a railroad from Sioux City, Iowa, to the south line of the state of Minnesota and connected with a railroad in O'Brien County, Iowa, intersecting said Sioux City and St. Paul R. R., and running thence westward to McGregor in the State of Iowa, upon which the United States might transport its troops and any of its property free of all toll or charges for transportation; Second, it has been deprived of the use of such road from Sioux City, Iowa, for the transportation of the U. S. mail, at such price as Congress or the United States, or the Post Master General might provide.

Par. 15. And your orator believes, and so charges the fact to be, that about the year 1872, the defendant, The Sioux City & St. Paul R. R. Company, without any authority or consent from the Congress of the United States or the General Assembly of the State of Iowa, commenced the construction of a railroad on the Minnesota State line, in range forty one west, and

constructed the same southward from the line of the said State of Minnesota to the town of LeMars, Iowa; but complainant avers that the defendant never contemplated the construction of but five sections of ten consecutive miles of said road. And complainant further avers that the aforesaid line of road, constructed as aforesaid, was not built upon the aforesaid line of definite location, or upon any line authorized by the United States or the State of Iowa, but departed therefrom throughout its entire length in distances varying from one mile to ten miles.

Par. 16. That thereupon, to-wit, on the 10th day of October, 1872, and the 17th day of June, 1873, and the 25th day of January, 1875, patents were mistakenly and unlawfully executed and delivered by your orator, the United States of America, conveying to the State of Iowa, in trust, the legal title to all lands embraced within the ten and twenty mile limits on either side of the line of said railroad as located by the defendant, The Sioux City & St. Paul Railroad Company, from Sioux City, Iowa, to the south line of the State of Minnesota, not theretofore disposed of, and amounting in the aggregate to 407,870.21 acres of land.

Par. 17. That the State of Iowa, Trustee as aforesaid, has heretofore caused to be patented to the defendant, The Sioux City & St. Paul Railroad Company, 322,412.8 acres of the land patented to the State of Iowa, as aforesaid, which said lands were so patented to the said defendant unlawfully and mistakenly, and notwithstanding the failure of said Sioux City & St. Paul Railroad Company to construct its said road in accordance with the terms and conditions of the said Act of Congress and the several acts of the Legislature of the State of Iowa.

Par. 18. That of the lands referred to in Par. 17 hereof, 41,687.52 acres were, by decree of the United States Circuit Court rendered at Des Moines, Iowa, May 21, 1886, pursuant to the mandate and decree of the Supreme Court of the United States, set apart and confirmed to the Chicago, Milwaukee & St. Paul R. R. Co., successor of the McGregor Western R. R. Co, as inuring to the said Chicago, Milwaukee & St. Paul R. R. Co., under the terms and conditions of the said Act of Congress; but complainant avers that the said defendant, The Sioux City & St. Paul R. R. Company and its grantees still hold the legal title to the remainder of the lands to-wit: 280,725.27 acres and have never relinquished or reconveyed the same to the United States or the State of Iowa.

Par. 19. That there are embraced in the [illegible] tions of the first five sections of ten [illegible] ten mile or place limits of the line of [illegible] located by the defendant, the Sioux City & [illegible] Company, as aforesaid, commencing at [illegible] line and running thence southwesterly [illegible] land; and your orator further [illegible] half the odd numbered sections, or [illegible] lands, lying within the common, ten mile limits [illegible] of said last named defendant, at the point of [illegible] thereof with the said McGregor Western Railroad [illegible] terms of said grant, inure to the said McGregor [illegible] road Company or its assigns, to wit—[illegible] And complainant therefore avers that if by reason [illegible] struction of the aforesaid five sections of ten consecutive [illegible] of road, the defendant, The Sioux City & St. Paul [illegible] Company, earned and became entitled to any of the lands [illegible] cluded in said grant and patents to the state of Iowa [illegible] thereby earn no more than an amount equal to the total [illegible] ber of acres embraced in the odd numbered sections [illegible] aforesaid fifty miles of road as located, less one-half the [illegible] numbered sections, lying in the aforesaid ten mile or overlapping limits, viz: 279,237.16 acres in all.

Par. 20. That by reason of the foregoing facts, the said defendant, The Sioux City & St. Paul Railroad Company, grantees and assigns, now hold the legal title to the aforesaid 280,725.29 acres of land, which less the said 279,437.16 acres of land leaves 1,288.13 acres of land patented to said defendant in excess of the total number of acres, which it was entitled to earn under the terms of said Act of Congress, if any, by reason of constructions of the aforesaid five sections of ten consecutive miles of road. That complainant has demanded of said defendant that it reconvey said lands to the United States of America, but defendant has at all times failed and still fails and refuses so to do. And complainant therefore avers that it is entitled to recover herein of said last named defendant, the said 1,288.13 acres of land from the most remote of the indemnity lands patented to said defendant in the last section of ten consecutive miles of said road, as aforesaid, or if the same be found to have been sold to innocent purchasers, the value thereof, viz: $25,000.

Par. 21. That of the lands referred to in Par. 16 hereof the State of Iowa still holds the legal title, a trustee as aforesaid

to the following described lands situated in the counties of O'Brien and Dickinson in the State of Iowa, to-wit:

[Here follow Four Lists of lands mentioned in [illegible] (25), (26), (27) and (28) of the Stipulated [illegible] (Record 31), there identified with the four [illegible] in the Answer of the United States to the [illegible] Cross-Bill (Record 39-40), and, as mentioned by our Statement, (in Brief,) including all [illegible] claimed by the Cross-Bill, to-wit; the lands in our Classes 1, 2 and 3.

As furnishing no additional information, such "Four Lists" are therefore here not repeated].

Par. 22. That more than fifteen years have elapsed since the passage and approval of said Act of Congress, and the acceptance thereof upon the terms, conditions, limitations, and restrictions therein named by the defendants, The Sioux City & St. Paul Railroad Company, and during all of said time, the said defendant has failed to construct and maintain or cause to be constructed and maintained any roads from Sioux City, Iowa, to any point on the south line of the State of Minnesota. And has failed and refused to construct and maintain any railroad upon the line or route of said railroad as located by said defendant, and has failed to complete the construction of any railroad on or near the aforesaid line of location to or from Sioux City, Iowa, or cause the same to be done, and has during all of said time failed and still fails and refuses to perform the conditions and requirements of said grant as heretofore stated herein.

Par. 23. And your orator further avers that at the date of the passage of the aforesaid Act of Congress and of the Legislature of the State of Iowa, and the acceptance thereof by said defendant, The Sioux City and St. Paul Railroad Company, a grant of lands had been made by the Congress of the United States to the State of Iowa, to aid in the construction of a railroad from the City of Dubuque, Iowa, to a point on the Missouri River at or near Sioux City, Iowa, which said grant was approved May 15th, 1856: And that afterwards by an Act of the Legislature of the State of Iowa, approved July 14th, 1856, the said grant was accepted by the State of Iowa, and the lands thereby granted were disposed of, granted and conferred to and upon the Dubuque & Pacific R. R. Co., a body corporate created and existing under the laws of Iowa, and said Dubuque

& Pacific R. R. Company, [illegible]
road, and filed the map of [illegible]
year 1856. That the aforesaid grant [illegible]
definitely fixed and determined by [illegible]
Sioux City & St. Paul Railroad Company [illegible]
and over and upon the aforesaid grant [illegible]
Pacific Railroad Company [illegible]
City, Iowa, although the said Sioux City & St. [illegible]
Company located its line or route of [illegible]
Sioux City, Iowa, northward so as to [illegible]
infringement of said grants, and by reason of [illegible]
small amount of land could pass under said [illegible]
between the aforesaid cities. And that by [illegible]
fringement of said grants there could not be [illegible]
whole of said grant of May 12th, 1864, [illegible]
limits thereof, sufficient lands to [illegible]
mile of the whole of said road from Sioux City [illegible]
Minnesota line. And your orator believes, and [illegible]
fact to be, that the defendant, The Sioux City & [illegible]
road Company, in bad faith and with intent to [illegible]
and defraud your orator, and deprive it of the [illegible]
fits which constituted the consideration for making [illegible]
and contract on its part, and with intent [illegible]
fraudulently to obtain the title to the whole of [illegible]
granted without constructing the whole of said [illegible]
menced the construction of its said road at the south [illegible]
State of Minnesota, instead of from Sioux City, Iowa, [illegible]
vided in the grant, and built southward only as far [illegible]
said city of LeMars, Iowa; the road so constructed [illegible]
that portion of the territory embraced within the [illegible]
where the fewest lands had been theretofore sold or [illegible]
of by the United States; and thereafter the said defendant [illegible]
ing fraudulently obtained the issuance of patents to [illegible]
of Iowa, in trust, for the whole of the lands [illegible]
the place and indemnity limits of said grant abandoned [illegible]
construction of said railroad and has ever since, [illegible]
fraudulently and unlawfully failed, refused and neglected [illegible]
complete the the construction thereof.

Par. 24. That the State of Iowa has never caused said [illegible]
road to be completed, and has never disposed of the [illegible]
scribed in paragraph 21 hereof for the purpose of [illegible]
said railroad or for any other purpose, and your orator [illegible]
that said lands have fully reverted to the United States of
America, under the terms and conditions of said Act of Con-
gress.

Par. 25. That your orator has demanded of the State of Iowa and the said Sioux City & St. Paul Railroad Company more than 90 days prior to the commencement of this action, a reconveyance of the above described lands and a relinquishment of all claims of said defendant and said State thereto, and said defendant has at all times since said demand failed and refused to reconvey and relinquish the same to the United States.

Par. 26. That the defendants, Elias F. Drake and Amherst H. Wilder, each claim some lien or interest in and to the land hereinbefore described, but complainant avers that said pretended claims are void and constitute a mere cloud upon the title to said land and are junior and inferior to the right, title and claim of this complainant therein.

Par. 27. That the said State of Iowa is a Sovereign State and under the Federal Constitution and Statutes cannot be sued in this Court nor made a party defendant herein with said Sioux City & St. Paul Railroad Company; but complainant is informed that the said State of Iowa is ready and willing to abide the final determination of this action and to execute said trust in accordance therewith. And if it shall appear by the answer of defendant's herein, or otherwise in the progress of the trial hereof, that other parties are necessary parties defendant herein, your orator asks leave to bring in said party.

For as much therefor as you orator is without remedy except in a court of Equity, it prays the Court that upon the hearing of this cause, that said Grant be adjusted in accordance with the Act of the Congress of the United States; the titles to the lands described in paragraph 21 hereof, be established and quieted in complainant as against the adverse claims of said defendants and each of them and that said defendants and each of them be forever barred and estopped from having or asserting any title to said premises, adverse to complainant; that the lands referred to in paragraph 20 (21?) hereof, be ascertained and collected from the most remote of the indemity lands, patented to said company opposite the last section of ten consecutive miles constructed by defendant company and that the title to said lands, when so ascertained and selected be established and quieted in complainant against the adverse claims of each of said defendants, or if it be found that said defendant, The Sioux City & St. Paul Railroad Company have disposed of said lands or any part thereof, and that no lands remain in said Company out of which the aforesaid lands may be selected, that your orator have judgment against said defendant to the value thereof to-wit:—$35,000; that your orator have general equitable relief and costs of suit and so your orator will ever pray.

May it please your Honor to grant process ... in directed to the defendant, The Sioux City ... road Company and also to the defendants, ... Amherst H. Wilder, if process can be had upon ... ants, within the State of Iowa, commanding them ... and answer herein, but not under oath, verification ... several answers being hereby express waived, to the ... allegations in this, your orators bill contained.

W. H. H. MILLER,
Attorney General, and
E. C. HUGHES,
Special Assistant U. S. Dist. Attorney.

STATE OF IOWA, }
CLAY COUNTY. } ss.

E. C. Hughes, being duly sworn deposes and says, that he ... attorney for complainant in the foregoing action; that he ... read the foregoing bill of complaint, knows the facts ... contained, and the same are true as he verily believe; that ... knowledge is gained from a personal examination and ... tion of the several acts of the Congress of the United ... and the General Assembly of the State of Iowa therein ... red and that the original maps, plats and records, or duly ... tified copies thereof, relating to said grant and the ... defendants thereunder; and that he has personal know ... edge of the fact pertaining to the construction of said railroads.

Subscribed in my presence and sworn to before me by the said E. C. Hughes this _____ day of _____, 1889.

Notary Public, in and for Clay County, Iowa.

EXHIBIT NO. "1."

An Act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State:

This Exhibit is here omitted, because, so far as material, constituting the *first* item of the "statement" of this brief.

EXHIBIT NO. "2."

Chapter 134.

Grant of lands to "Sioux City & St. Paul Railroad Company."

This exhibit is here omitted, because, so far as material, constituting the *second* item of appellant's "statement" in brief.

EXHIBIT NO. "3."

An Act to accept the grant of land to the State of Iowa, made by act of Congress, May 12th, 1864, and to carry out the provisions of said Act, entitled "An act for a grant of land to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said state."

This Exhibit is here omitted, because, so far as material, constituting the *third* item of appellant's "statement" in brief.

Exhibit No. "6".

AN ACT to amend an act approved April 20th, 1866, [illegible]
"An act to accept the grant of land [illegible]
made by Act of Congress of May 12th, 1864, [illegible]
out the provisions of said act granting [illegible]
land to the State of Iowa, to aid [illegible]
the construction of a railroad in said State, [illegible]
effectual the acceptance by the State of Iowa [illegible]
of land."

WHEREAS, in said act of the General Assembly of the [illegible]
of Iowa, approved April 20th, 1866, the word "July" [illegible]
the first section thereof by mistake, instead of the word [illegible]
therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL [illegible]
SEMBLY OF THE STATE OF IOWA, that said Act, [illegible]
April 20th, 1866, is hereby amended by striking out of the [illegible]
section thereof, the word "July", and by substituting [illegible]
instead, the word "May", so that the date of approval [illegible]
Act of Congress therein referred to, will be correctly [illegible]
having been May 12th, 1864, and which was intended [illegible]
been therein stated; and the acceptance of said grant [illegible]
intended to be made by said Act approved April 20th, [illegible]
hereby ratified and confirmed.

SEC. 2. This act, being deemed by the General Assembly [illegible]
of immediate importance, shall take effect and be in force [illegible]
and after its publication in the daily Iowa State Register [illegible]
Iowa Homestead, newspapers published at Des Moines, Iowa.

Approved March 24, 1868.

I hereby certify that the foregoing Act was published in the [illegible]
daily State Register, March 27th, 1868, and in the Iowa Home-
stead April 1st, 1868.

ED. WRIGHT,
Secretary of State.

This Exhibit is referred to in the *fourth* item of Appellees' [illegible]
"Statement", in Brief.

EXHIBIT NO. "5."

OFFICE OF THE SIOUX CITY & ST. PAUL RAILROAD CO., SIOUX CITY, SEPT. 19TH, 1866.

At a meeting of the Board of Directors of the Sioux City & St. Paul Railroad Company, held this day at Sioux City, Iowa, the following resolutions were unanimously adopted:

Resolved, That the Sioux City & St. Paul Railroad Company hereby assent to and accept the provisions of an act enacted by the General Assembly of the State of Iowa, and approved April 3rd, 1866, entitled, "An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act for a grant of land to the State of Iowa in alternate Sections to aid in the construction of a railroad in said State from Sioux City, in said State of Iowa to the south line of the State of Minnesota between the Big Sioux and West Fork of the Des Moines River.'"

Approved May 12th, A. D., 1864.

Resolved, That the President and Secretary of the Sioux City & St. Paul Railroad Company be and they are hereby required to affix their signatures and the Seal of said Company to the above resolutions and have the same filed in the office of the Secretary of the State of Iowa forthwith.

J. C. C. HOSKINS,
President Sioux City & St. Paul Railroad Company,

Attest: N. C. HUDSON,
Secretary Sioux City & St. Paul Railroad Company.

STATE OF IOWA, OFFICE OF SECRETARY OF STATE, } ss.

Filed in this office this 25th day of Sept.

U. S. OF AMERICA, N. DIST, IOWA. } ss:

I hereby certify that the above and foregoing is a true and correct copy of original now on file in my office.

Attest: A. J. VAN DUZEE, Clerk,
By J. H. BOLTEN, Deputy.

Office Supreme Court U. S.
FILED.
APR 10 1895
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

THE CHICAGO, MILWAUKEE AND ST. Paul Railway Company, appellant,
v.
THE UNITED STATES, THE SIOUX CITY and St. Paul Railroad Company, Elias F. Drake, and Amherst H. Wilder. } No. 293.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, appellant,
v.
THE UNITED STATES, THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY, ELIAS F. DRAKE, AND AMHERST H. WILDER. } No. 293.

BRIEF FOR THE UNITED STATES.

STATEMENT.

After a decision was reached in the suit of the *United States* v. *The Sioux City and St. Paul Railroad Company, et al.*, in the circuit court of the United States for the northern district of Iowa, the Chicago, Milwaukee and St. Paul Railway Company intervened and filed a cross bill, claiming title to the lands recovered in that suit by the United States.

The facts in that case, so far as they are relevant, are, by stipulation, made evidence in this case (Rec., p. 82, par. 30), and it will not be necessary to repeat them, as they are before the court in cause 149, tried with this.

The additional facts necessary for an understanding of this controversy are as follows: The line of railroad from West McGregor, referred to in the act of Congress of May 12, 1864, was by the McGregor Western Company and its successors, the McGregor and Sioux City and the McGregor and Missouri River Railroad companies, constructed to Algona prior to 1871. (Rec., p. 77, pars. 2 and 3.)

These companies failed to build the road to a junction with the Sioux City road, in O'Brien County, as required by Congress. On February 27, 1878, the State of Iowa passed an act reciting this fact and revoking the grant of lands made to those companies, and granted to the Chicago, Milwaukee and St. Paul Railway Company all lands and rights to lands "granted to the State of Iowa to aid in the construction of a railroad" from South McGregor until it shall intersect, in O'Brien County, with a railroad running from Sioux City to the Minnesota line, provided for by act of Congress of May 12, 1864. (Rec., p. 47.) The third section provides that to the Milwaukee company, upon completion, shall be granted all the remaining lands "embraced in said grant appertaining to their line of railroad, including all or any part or moiety of the lands in said overlapping limits, which by the terms of said act of Congress appertain to their line of road." (Rec., p. 48.)

The Milwaukee company completed the road to Sheldon, the point of intersection, in 1878. (Rec., p. 78, par. 4.) The lands claimed by appellant are a part of the lands covered by the decree in the original bill, and all of them

lie within the granted or indemnity limits of the railroad as located from McGregor to Sheldon. (Rec., p. 79, par. 12.)

They all likewise lie within the granted or indemnity limits of the Sioux City and St. Paul Railroad Company.

On March 4, 1879, appellant instituted a suit against the Sioux City and St. Paul Railroad Company and the trustees, under the mortgages made by it, to settle the rights of the two companies in respect of the lands within the place and indemnity limits common to both of them. (Rec., p. 79, par. 16.)

The matters in controversy were adjudicated in 117 U. S., 406, the court holding that the title related back to the date of the grant, and that prior location or construction of road gave no priority, and that in conflicting place limits each company took, as of the time of the grant, the lands in equal moieties, and that the title to indemnity lands was fixed at the time of selection.

In pursuance of this decision proceedings were had by the said companies, under which they partitioned the lands in the place and indemnity conflicting limits, and *all of the lands involved in this suit were set apart in severalty to the Sioux City and St. Paul Railroad Company.* (Rec., p. 80, pars. 20–22.)

In a proceeding before the Secretary of the Interior certain settlers sought to have suit instituted to recover a portion of the lands so set apart in severalty to the Milwaukee company, and that company appeared by counsel and successfully resisted the same. (Rec., p. 80, par. 23.) The Milwaukee company received title to and sold all of the lands set apart to it in said proceedings. (Rec., p. 81, par. 24.)

Part of the lands sought to be recovered lie within the place limits of the Sioux City road and outside of the place, but within the indemnity, limits of the Milwaukee road, a part within the joint place limits of both roads, and a part within the joint indemnity and outside of the place limits of both roads. (Rec., p. 81, pars. 26–28.) The Milwaukee road has gotten all of the land to which it was entitled in place and indemnity limits outside of what it claims in this suit. (Rec., p. 81, par. 29.) A portion of the land claimed by appellant has been taken up by and is claimed by settlers under the homestead and preemption laws of the United States. (Rec., p. 82, par. 32.)

POINTS AND ARGUMENT.

I.

Appellant does not insist that it had or could have any title to these lands as against the Sioux City and St. Paul Railroad Company, but inasmuch as the United States recovered them, it claims that its rights attached. (Rec., p. 31.) The proposition is that while it received by the grant no title to these lands, which were by the grant vested in trust for another road, it acquires a right in them by the default of the other road and the reversion of the lands to the Government.

This right, if it exist at all, must relate back to the grant, which is the source of title.

It is under the contention to operate as a shifting use, or conditional limitation.

There is no such provision in the grant. This court held that the grant was to Iowa "as a trust for the con-

struction of two roads which necessarily crossed each other." (117 U. S., 407.)

What was granted for one road was not granted for the other. The same lands were not granted for both roads. The grants were separate and distinctively for building each road independently of the other, and no mutual rights could exist as to the lands granted, whether within or without conflicting limits. If the extent of the grants for each be ascertained, then there can be no title asserted beyond them.

This extent was determined between the beneficiaries of these grants, in respect of the very lands in question in the case of the *Sioux City Railroad* v. *Chicago, Milwaukee and St. Paul Railway Company* (117 U. S., 407). This court decided that the "title acquired from the United States relates back to the date of the grant, and neither company can obtain any superiority of title by any act done by it or by any omission to act by the other, provided there is no forfeiture of the grant." * * * "In such case the companies take the lands coming within the conflicting lines in equal undivided moieties."

The Milwaukee company only acquired title to a moiety, and these lands it has received and disposed of. That was all acquired by the grant and Congress has not enlarged it. This is not a case of forfeiture. The original bill of the United States does not seek a forfeiture, but proceeds upon the claim that the Sioux City company for completing 50 miles of road only earned a certain quantity of land; that it has gotten its full quota of acres, and that while in this quota it might have and should have taken the lands in

suit, it selected an equal amount of other lands, which it has sold and can not restore, and that Iowa, the trustee, having the disposition of these lands under the act of Congress, has conveyed them by legislative act to the United States, and that the Sioux City company as against the trustee and the Government never got any legal title to them, but is unlawfully asserting the same, and has clouded them with a mortgage.

If the Sioux City company had gotten title to these lands, appellant confessedly would have no case. Because it took other lands and the United States in an equitable adjustment recovers these, then appellant claims that its right springs up, not founded on its own title, but upon the infirmity of the title of the Sioux City company. The United States alone can insist upon a forfeiture and predicate rights upon it. (*Van Wyck* v. *Knevals*, 106 U. S., 369.)

II.

Where by prior or contemporaneous grants lands are excluded from the operation of a grant for a railroad company, the fact that the United States, by forfeiture or otherwise, becomes reinvested with the title to the excluded lands does not give such company any right to them. (*Leavenworth R. R.* v. *United States*, 92 U. S., 733; *United States* v. *Southern Pacific Railroad Co.*, 146 U. S., 570, 606; *United States* v. *Northern Pacific Railroad Co.*, 152 U. S., 299.)

There is no guaranty of quantity and no indemnity for lands not included within the place limits of the grant.

The lands in the conflict place limits granted for the Sioux City company were not within the operation of the grant for the Milwaukee company, the title of each company attaching only to a moiety. (117 U. S., 406.)

This excluded the moiety granted for the building of the Sioux City road as effectually as if it had passed under a prior grant. That construction, if there be doubt, must prevail which secures the public interest.

A grant for internal improvement is not extended beyond the expressed intent. In *Leavenworth, etc., R. R.* v. *United States* (92 U. S., 740), the court says:

> It should be neither enlarged by ingenious reasoning nor diminished by strained construction. The interpretation must be reasonable, and such as will give effect to the intentions of Congress. This is to be ascertained from the terms employed, the situation of the parties, and the nature of the grant. If these terms are plain and unambiguous, there can be no difficulty in interpreting them, but if they admit of different meanings, one of extension and the other of limitation, they must be accepted in a sense favorable to the grantor. *And if rights claimed under the Government be set up against it, they must be so clearly defined that there can be no question of the purpose of Congress to confer them.*

The construction must be given that will carry out the intent of Congress. (*Monona and St. Peter R. R. Co.* v. *Barney*, 113 U. S., 618.)

This court has uniformly held that such grants are to be construed favorably to the Government, and that nothing passes but what is granted in explicit terms. (*Charles River Bridge* v. *Warren Bridge*, 11 Pet., 544; *Rice* v. *Railroad Company*, 1 Black, 380.)

suit, it selected an equal amount of other lands, which it has sold and can not restore, and that Iowa, the trustee, having the disposition of these lands under the act of Congress, has conveyed them by legislative act to the United States, and that the Sioux City company as against the trustee and the Government never got any legal title to them, but is unlawfully asserting the same, and has clouded them with a mortgage.

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This court has uniformly held that such grants are to be construed favorably to the Government, and that nothing passes but what is granted in explicit terms. (*Charles River Bridge* v. *Warren Bridge*, 11 Pet., 544; *Rice* v. *Railroad Company*, 1 Black, 380.)

III.

The contention of appellant that these lands were granted to it by the State of Iowa by the act of 1878, above referred to, is not sound. The act by its express terms only conveys those lands which, under the grant of May 12, 1864, appertained to the road to be built from South McGregor. If the State of Iowa had undertaken to grant to the Milwaukee road the lands set apart by Congress for building the Sioux City road, it would have been a breach of trust and a nullity. (*Schulenberg* v. *Harriman*, 21 Wall., 44; *Farnsworth et al.* v. *M. & P. R. R. Co.*, 92 U. S., 65.)

The State of Iowa did not transfer these lands to the Milwaukee road. On the contrary, it treated them as lands set apart for building the Sioux City road, and forfeited them as such, and by act of the legislature reconveyed them to the United States.

The Milwaukee company acquired no title by the grant and none by the legislative act. (*S. C. & St. P. R. R. Co.* v. *Osceola County*, 43 Iowa, 321.)

IV.

When the Sioux City road was located, the lands within its place limit and within the indemnity limit of the Milwaukee road passed entirely beyond any possibility of their inuring to the benefit of the Milwaukee road, and this was held in 117 U. S., 406.

Those in the place limits common to both companies vested in equal moieties as of the time of the grant and neither company could acquire any right in them beyond this. (117 U. S., 406.)

Another class is those lands within the common indemnity limits of both companies. These lands had all been selected by the Sioux City road, and patents therefor issued to the State of Iowa.

In the suit between the two companies (117 U. S., 406) it was held that each company was entitled to half, and they were partitioned accordingly. The title as between them to the portion of this class in controversy was vested in the Sioux City company, which has obtained from the Government title to other lands in their place, and to the full amount of what it earned. In a controversy wherein the Government is adjusting its rights with the Sioux City company the Milwaukee company can not predicate any claim upon the action of the Government in insisting that, as between it and the Sioux City company, that company has acquired no title to these lands. Besides, the Milwaukee road shows no right to these indemnity lands. It does not show that it selected them as indemnity lands, and that the selection was approved by the Secretary of the Interior, which it must do as a condition precedent to any assertion of right to them. Until that was done it could acquire no title to them. (*K. P. Railroad* v. *Atchison Railroad*, 112 U. S., 414, 421; *United States* v. *Missouri, etc., Railway*, 141 U. S., 375; *Wisconsin Central Railroad* v. *Price County*, 133 U. S., 511.)

If they were open for selection it has acquired no title to them. (117 U. S., 408.) It does not show that it had the right to select them. The bill avers and the stipulation shows that for the line constructed by it a full grant

would have been 1,440,000, acres and that it has received but 399,557.72 acres. This does not show that the Government owned at the time of the grant 1,440,000 acres within its place limits, and the grant only covered what was then owned. (*United States* v. *Northern Pacific R. R. Co.*, 152 U. S., 298; *United States* v. *Missouri, etc., Railway*, 141 U. S., 369.)

It would only be entitled to indemnity for lands sold by the Government between the time of the grant and the time of withdrawal. The loose averment and statement that a full grant would have contained so much can not be taken as equivalent to one that the Government granted 1,440,000 acres especially when it is made the foundation for asserting rights to indemnity lands. Appellant does not show that the Government granted it an acre more than it got. It can not go into the indemnity lands for the moiety granted to the Sioux City company, for they were never granted to appellant and it can not go into them for other losses, for it shows none.

V.

SETTLERS.

The stipulation shows that settlers' rights to these lands are involved. Appellant should not defeat them by a right springing into existence against the Government which it never could have asserted against the Sioux City company. The act of 1887 (24 Stat., p. 556), under which the Government sued to quiet title to these lands, expressly provides for the protection of settlers who have gone upon lands of this character. If the settlers can hold them

against the Sioux City company, to which they were granted, their equities are stronger than those of the Milwaukee company, to which they were not granted and which never asserted a right to them before. Settlers who went on the lands and improved them, believing their rights would prevail against the Sioux City company, which alone was claiming them, ought not to be defeated by a claim which has been dormant and of which they never had any notice.

The United States is under an obligation to give clear title, by appropriate proceedings, to settlers whose rights may be superior to those of a land-grant railway company. (*United States* v. *Missouri, etc., Railway*, 141 U. S., 380.)

"Legislation respecting public lands is to be construed favorably to the actual settler." (*Lake Superior, etc.*, v. *Cunningham*, 155 U. S., 385.)

J. M. DICKINSON,
Assistant Attorney-General.

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JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 293—Record No. 14844.

THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, *Appellant*,

vs.

THE UNITED STATES, THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY, AND OTHERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

BRIEF AND ARGUMENT FOR HOMESTEAD CLAIMANTS ON MOST OF THE LANDS IN CONTROVERSY.

WILLIAM LAWRENCE,

Of Counsel for the Homestead and Pre-emption Claimants.

IN THE

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BRIEF AND ARGUMENT FOR HOMESTEAD CLAIMANTS ON MOST OF THE LANDS IN CONTROVERSY.

Some of the facts material in this case are as follows:

I. *May* 12, 1864, an act of Congress (13 Stat., 72) was approved, granting to the State of Iowa, in most respects in the usual form, lands in aid of the construction of a railroad from Sioux City to the south line of Minnesota, without naming any corporation as beneficiary, and for the use and benefit of the McGregor Western Railroad Company named as beneficiary in

aid of the construction of a railroad from South McGregor in a westerly direction until it shall intersect, in O'Brien County, said road running from Sioux City to the Minnesota line.

The Iowa Act of April 3, 1866, accepted the grant and made the Sioux City and St. Paul Railroad Company the beneficiary to construct the road; this will for brevity be called the Sioux City Company.

In 1872 the Company *commenced* the construction of its road *on the south line of Minnesota*, and by September 25, 1872, had completed it to Le Mars, a distance of $56\frac{13}{100}$ miles, besides $1\frac{1}{10}$ miles in Sioux City. From Le Mars to Sioux City, 25 miles, the road has never been constructed.

Patents were issued by the United States to the State of Iowa, in 1872, 1873, 1875 and 1877 on account of road constructed by the Sioux City Company for 407,910.21, counting 40 acres twice patented only once.

Of these lands the State of Iowa withheld from the Sioux City Company 800 acres in Dickinson County, and 21,979.85 acres in O'Brien County on the ground that the Sioux City Company had failed to complete its road. If this Company had completed its road it would have been entitled to all the lands. The O'Brien County lands are described in classes *one*, *two* and *three* of the amended cross-bill (printed Record pages 28, 29; see Par. 14, Record 79), also in the answer of the United States thereto (printed Record, 38, 41), also in paragraph 21, Record print, 7, 8, of the original bill hereafter referred to, in case of the United States *vs.* the Sioux City Company, case No. 149 in this Court. *October* 4, 1889, the United States filed a bill in equity against the Sioux City Company and others in the Circuit Court of the United States for the Northern District of Iowa, praying for decree to cancel the patents to the State for

the lands mentioned and to quiet the title of the United States thereto.

The rights of the McGregor Western Company under the Act of 1864 have passed through several phases and corporations to the Chicago, Milwaukee and St. Paul Railway Company, which will be called the Milwaukee Company. (6 Interior Dept. Land Dec., 57, 65; Record in case No. 149, 56, par. 39.)

December 11, 1890, the Milwaukee Company on leave filed a cross-bill (Record print 6, in this case 293) and on May 5, 1891, an amended cross-bill (Record 23), claiming these lands.

February 2, 1891, numerous homestead settlers on most of the lands, filed on leave a cross-bill claiming the lands they occupied (Record print 16) and describing the lands so occupied. (Record, 19–21.)

December 18, 1890, at October Term, the Circuit Court made a decree as between the United States and the Sioux City Company, cancelling the patents and quieting the title of the United States, again describing the lands. (Record print in *original* case No. 149, pp. 257–260.) The opinion of Shiras, *Judge*, is in that record, 251–257. The Sioux City Company appealed and that case is now pending in this Court as case No. 149, record case 14620.

The case on the cross-bills as to the rights of the Milwaukee Company and the homestead claimants was continued.

May 6, 1891, May Term, the Circuit Court made a decree dismissing the cross-bill of the Milwaukee Company, and dismissing, but *without prejudice*, the cross-bill of the homestead claimants. (Record of cross-bill case No. 293, print 100–103.)

The opinion of Shiras, *Judge*, is on pages 94–98.

The Milwaukee Company appealed and the case is now in this Court as case No. 293, record No. 14844.

All the pleadings were filed in the *original case*, though now appearing as two cases in this Court.

There is another case—four cases consolidated—in this Court in error to the Supreme Court of Iowa, No. 214, record No. 14725—the Sioux City Company *vs.* Lewis Countryman and others—involving the title to four quarter sections of the same lands, claimed by occupants under the homestead and pre-emption laws, against the Sioux City Company, claiming title as in the original bill.

The decision in case No. 149, if against the Sioux City Company, will be conclusive against it in this case.

The opinion of the Supreme Court of Iowa in case No. 214 is in the record, print 75–82.

The judgments were in favor of the settlers against the Sioux City Company,

1878, *November* 30, the Milwaukee Company completed the construction of its road to the point of intersection with the Sioux City road in Sec. 31, T. 97, R. 42, at Sheldon, O'Brien County. (Record, 78, par. 4; Record in case No. 149, p. 52, par. 18.)

At the point where the road of the Milwaukee Company intersects that of the Sioux City the 10 and 20 mile limits of the two roads *overlap*, giving rise to conflicting claims between the two companies.

But—Of the lands in controversy 740.07 acres lie west of the western terminal limit of the Milwaukee Company's road and were not covered by the grant in favor of that Company. (Record, 38 and map of lands.)

1879, *April* 7, the Milwaukee Company filed its bill in the United States Circuit Court for partition of the lands in the overlapping granted and indemnity limits

against the Sioux City Company and others. (Record in case No. 149, p. 52, par. 19; Record, 112.)

This case was decided in the Supreme Court, March 29, 1886 (117 U. S., 406–410), and the rights of the two companies, *as between themselves*, were fixed as follows:

(1) Lands within the common granted and common indemnity limits to each company an undivided half.

(2) Lands within the granted limits of the Milwaukee road, and within the indemnity limits of the Sioux City road, all to the Milwaukee Company.

(3) Lands within the granted limits of the Sioux City road, and within the indemnity limits of the Milwaukee road, all to the Sioux City Company. (6 Land Dec., 58; Record, 163; see Partition Record and proceedings in Exhibit 16, pp. 112–162 of the Record in case No. 149.)

1886, *May* 21, a decree was made for partition in the Circuit Court in pursuance of a mandate of the Supreme Court, under which partition was made and confirmed October 28, 1886. (117 U. S., 406–410; Record in case No. 149, 53, par. 22; same Record, 136–153.)

Of the lands *aparted* to the Milwaukee Company a portion had been previously patented by the Governor of Iowa to the Sioux City Company.

These lands the Milwaukee Company received.

It is to be noted, that as to certain lands within the overlapping limits of the two roads, no partition was made because the Sioux City Company having received patents therefor, had sold them to innocent purchasers. (Record same, 154–157; Partition Decree in case No. 149, Record, 140, 142; Partition Report, same Record, 154, 157.) The Milwaukee Company by arrangement with the Sioux City Company, ratified the sales to such purchasers.

In July, 1887, the Secretary of the Interior in adjusting the land grant as required by the Anderson act of

March 3, 1887 (24 Stat., 556), apportioned to the Milwaukee Company the lands set off to it by the partition decree.

The Milwaukee Company then applied to the Governor of Iowa to issue patents to it for all that portion of the lands aparted to it by the partition decree *which had not been theretofore patented by the State.*

1886, *September* 27, and *November* 30, the Governor of Iowa patented to the Milwaukee Company the lands apportioned to it by the decree of the Circuit Court, which had not been theretofore patented or certified by the Governor. (Record in case No. 149, 53, par. 24.) There are *prior* acts and proceedings affecting these lands.

Thus the Milwaukee Company has received *all the lands* aparted to it by the partition decree. It has also received all *subject to grant* or indemnity selection in its favor under the granting act of May 12, 1864, or an equivalent in partition.

The lands *set apart to the Sioux City Company—not* to the Milwaukee Company—by the partition decrees, which had not been theretofore patented by the Governor, are the lands *now in controversy*, described in paragraph 21 of the bill in case No. 149.

These are the *same lands* given to the United States by the decree of December 18, 1890, in case of United States *vs.* Sioux City Company, 149 (Printed Record in that case, p. 257), and as to which Shiras, *Judge*, in the opinion in the Circuit Court in that case, said:

"The Act of Congress of March 3, 1887 (24 Stat., 556), on which this suit is based, makes it the duty of the Department and of the courts dealing with this matter to carefully protect the rights and equities of ACTUAL SETTLERS. Hence the rule should be followed, that in making such adjustment, so far as it may be possible to do so, actual settlers shall not be deprived of their farms or homes." (Record, Case No. 149, print p. 257.)

1891, *February* 2, the settlers on the lands filed a cross-bill asserting their claim to the lands. They made their settlements soon after the Iowa Act of March 16, 1882, *resumed all the lands which the Sioux City Company had failed to earn.* (Record 16, 22.)

☞It is *especially* to be noted that *of the lands claimed by settlers* (Record in case No. 149, 248–250, Exhibit 35), none were set off to the *Milwaukee Company* except the E. ½, S. E. ¼, Sec. 7, Town. 97, R. 42, claimed by James Poling (same Record, 158), and also the N. E. ¼ of N. E. ¼ and S. E. ¼ of S. E. ¼ of Sec. 31, T. 97, R. 42, 80 acres in O'Brien County (Compare Record 158, 249), which is claimed by James Griffin, a settler (Record, 249), who *also* claims the S. E. ¼ of the N. E. ¼ and the N. E. ¼ of the S. E. ¼ of the same section, in all 160 acres.

The cross-bill of the settlers avers that the Milwaukee Company with a full knowledge of their occupancy of the lands failed for *twelve years* to make any claim thereto. (Record print 18.)

The lands now in controversy are described in the answer of the United States (Record print 38) to the amended cross bill of the Milwaukee Company in four distinct classes:

1. Embracing the lands lying *west* of the western terminal limit of the Milwaukee Company road (Record, 38) "*never embraced* within the grant for the Milwaukee Company," being 740.07 acres.

2. Lands within the *place limits* of the Sioux City road and within the *indemnity* limits of the Milwaukee road "*never embraced* within the grant to that Company" (Record, 39) 3,611.49 acres.

3. Lands within the *joint place limits* of the two roads, and which were aparted to the Sioux City Company by the partition decree:

"and thereby became distinguished and set apart in severalty as the lands intended by Congress to pass by the aforesaid grant" for the Sioux City Company. (Record, 39–40) in all 10,859.53 acres.

As to these the partition decree is a *res adjudicata*—denying any right of the Milwaukee Company therein —that is, giving to that Company ITS FULL SHARE of the lands to which it was entitled.

4. Lands within the *joint indemnity* limits of the two roads, outside of the *place* limits of each. They are lands aparted to the Sioux City Company by the partition decree for *its share* of the indemnity lands; they are included in *indemnity selections* and patent to Iowa for the Sioux City Company. But they are lands which that Company *failed to earn*, and were accordingly decreed to the United States in case No. 149—in all 6,688.76 acres. (See 117 U. S., 409, 439.)

Of these lands the 2d, 3d and 4th classes are claimed by the Milwaukee Company because they are either within its *place* or *indemnity* limits, notwithstanding the partition decree which gave this Company its *full share* of said lands.

The cross-bills of the Milwaukee Company *concede*, that as between the two companies the Sioux City Company would be entitled to them if it had *completed its road*, but that, not having done so, and thus having failed to earn, or *forfeited* these lands, to the United States, they become subject to grant or indemnity selection for the Milwaukee Company, as if they had not been granted or given as indemnity to the Sioux City Company, in case of the completion of its road.

If these were lands, subject to grant, or indemnity selection for the Milwaukee Company, it would be entitled to an amount in excess of those in controversy.

ARGUMENT.

The Act of Congress of May 12, 1864, made a land grant to the State of Iowa which by Iowa laws inured; part in aid of the Sioux City Company and part in aid of the Milwaukee Company.

In the case No. 149 of the United States *vs.* The Sioux City Company, in this Court, the complainant seeks to cancel patents issued by the United States to the State of Iowa for 21,979.85 acres of land under the Act of 1864, in *aid of the Sioux City Company*, on the ground that the Company never earned them, that the Company having failed to complete its road, by the express term of the act *forfeited* the lands *to the United States*, and the bill seeks to enforce the *forfeiture*.

The Milwaukee Company also, by its cross-bills in that case, now on appeal in the Court as a separate case, unites in asking that the forfeiture be decreed.

If this should be done, the question will be presented in this case, on the cross-bills of the Milwaukee Company whether about 21,000 acres of the lands so to be forfeited shall not also then be adjudged to that Company?

The contest then becomes one between the United States and the Milwaukee Company.

The amended cross-bill of the Company asks for a decree, giving to it about 21,000 acres of land in O'Brien County, Iowa, described in three classes (Record print 28):

First. Lands within the granted or ten mile limits of the roads of the Sioux City Company and of the Milwaukee Company.

Second. Lands within the granted or ten mile limits of the Sioux City road and within the indemnity limits of the Milwaukee road. (Record, print 28–29.)

Third. Lands within the overlapping indemnity

limits of the two roads, outside of the granted limits of either. (Record, print 29.)

The bill alleges :—

"That said 21,000 acres of land are within the overlapping limits of the two grants, and were covered by and included in both of said grants, and that as between your orator and the said Sioux City and St. Paul Railroad Company they would rightfully *belong to said last named Company* if it had *completed its whole line of road* so as to be entitled to the full grant made by said act of Congress; but that inasmuch as said Company had not fully completed the railroad specified in said grant, your orator is informed and believes, that it has already received all the lands to which it was entitled, and for that reason, that it is not entitled to the lands in controversy; and your orator charges the truth to be that *inasmuch as said Sioux City and St. Paul Railroad Company are not entitled to said lands, they rightfully belong to your orator under the grant aforesaid.*" (Record print 31.)

The State of Iowa, as *trustee*, charged with the duty of administering the land grant, decided that the Sioux City Company had failed to earn 21,979.85 of the lands patented by the United States to the State, and therefore refused to issue patents to the Company therefor, and on March 16, 1882, an act of the Iowa Legislature (Laws 1882, Ch. 107) *resumed all the lands* and rights conferred upon the Sioux City Company by the Act of Congress of May 12, 1864, and the Iowa Act of April 3, 1866, *"which had not been earned by said Company."* (Printed Record, 210, in case No. 149.)

The United States, and the homestead and pre-emption settlers on these lands deny the right of the Milwaukee Company to any of them.

I. FIRST *of all, as to lands west of the terminal limit of the Milwaukee road at Sheldon—740.07 acres.*

It is supposed the Milwaukee Company will not claim

these. (Compare cross-bill, Record print 28, with answer of the United States, Record print 38.)

The land grant of May 12, 1864 (13 Stat., 72; Record in case No. 149, p. 11), is of—

"Every alternate section of land designated by odd numbers for ten sections in width on EACH SIDE of said road."

These lands do not fall within the terms of the *grant*, and they are not within indemnity limits. They are not on the *side* of the Milwaukee road.

II. *The claim of the Milwaukee Company, that it is entitled to lands FORFEITED by the Sioux City Company is untenable.*

Its rights are determined by the granting act.

1. This is to be construed against the Company if its words will so permit.

"If there are doubts about * * * the extent of the grant the Government is to recover the benefit of them." (L. L. & G. R. R. Co. *vs.* U. S., 92 U. S., 746.)

"Whatever is not given expressly or *very* clearly implied from the *words* of the grant is withheld." (Attorney-Genl. Black, 9 Op.)

2. The words of the granting act *very clearly deny* to the Milwaukee Company any right in lands appropriated by the act in aid of the Sioux City Company.

The Milwaukee cross-bill concedes that the lands were granted to the State of Iowa to be appropriated in aid of the Sioux City Company.

Sec. 3 of the granting act provides—

"that the lands hereby granted shall be subject to disposal of the legislature of Iowa for the purpose aforesaid, and *no other*."

This is a distinct denial that they could in any event go to the Milwaukee Company.

SEC. 4. "That the lands thereby granted shall be disposed of by the State for the *purpose aforesaid only.*"

The words of the act, "the land *hereby granted,*" apply to all the lands given by *grant* or by *indemnity selection* in aid of the Sioux City Company.

This must be manifest from several considerations. It applies to the lands "to be disposed of by the State," and this includes *both granted* and *indemnity* lands.

The rule as to strict construction does not apply here, because it is not now applied to *measure the extent of the grant*, but only the *use* to which *lands* are to be applied. There is no doubt about the lands, or the extent of them, for the intended use.

The Attorney-General in construing the Anderson Act of March 3, 1887 (24 Stat., 556), gave construction to the words: "that if in the adjustment of said grants, etc." And he said the act, "in the use of the word 'grant' must have necessarily included *both* the *primary* and the *indemnity* limits." (Opinion November 17, 1887; 6 Land Dec., 272, 274.)

The section of the granting act of 1864 which provides for a forfeiture to the United States, refers to the "said land hereby granted," evidently including all granted or selected as indemnity in aid of the road. And the rule of liberal construction in favor of the United States applies to protect all its rights and afford a *remedy* for failure of the Railroad Company to complete the road.

3. The *forfeiture* provided for in the granting act, of lands by failure to complete the road within the specified time, is "to the United States." Thus section 4 provides:

"That if said roads are not completed within ten years * * * the said land hereby granted and not patented shall revert to the State of Iowa for the pur-

pose of securing the completion of said roads within such time, not to exceed five years, and upon such terms as the State shall determine. * * *

"And should the State fail to complete said roads within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid *shall revert to the United States.*"

This distinctly determines that the lands shall be restored *to the United States*—not to the Milwaukee Company.

4. The proviso to section 1 of the granting act *excepts* the lands in controversy from any grant to the Milwaukee Company; it declares:

"That any and all lands heretofore reserved to the United States by any act of Congress, *or in any other manner*, by competent authority * * * for * * * any * * * other purpose are excepted from the operations of this act."

The lands in controversy were excepted from grant to the Milwaukee Company because by "competent authority" they were reserved, granted for "another purpose"—to wit: to aid the construction of the Sioux City road—were "otherwise appropriated," as Judge Shiras forcibly said in the opinion in the Circuit Court. (Record, 96.) And he cites L. L. & G. R. R. *vs.* U. S., 92 U. S., 733; Newhall *vs.* Sanger, 92 U. S., 761.

This Court has said of a land grant act:

"Every tract set apart *for special use* is *reserved to the Government*, to enable it to enforce them * * *. there is an equal obligation resting on the Government to require that neither class of reservation *be diverted from the uses to which it was assigned.*" (L. L. & G. R. R. Co. *vs.* U. S., 92 U. S., 747.)

Lands given to the Sioux City Company are as fully reserved as lands reserved to the Government. These lands were by the granting act "*appropriated*" first,

in aid of the Sioux City Company, then if *forfeited*, to *revert to the* United States—thus reserved to the United States—and became a part of the public domain, *subject to* homestead and pre-emption entry. The LAW made these specific directions of the lands.

The failure of the Sioux City Company to earn these lands does not abrogate the proviso reservation.

A homestead entry existing at the time of a grant excepts the land covered by it from the grant. Its subsequent abandonment does not subject it to the grant—it continues excepted. (Bardon *vs.* Northern Pacific, 145 U. S., 535; 92 U. S., 761; 99 U. S., 386.)

So here this land once excepted is always excepted. The failure of the Sioux City Company to earn the land cannot *per se* operate as a grant to the Milwaukee Company.

III. *The partition decree made between the two Railroad Companies under the mandate of this Court in the case of the Milwaukee Company* vs. *the Sioux City Company* (117 *U. S.*, 406), *decided March* 29, 1886, *and the Anderson act of March* 3, 1887 (24 *Stat.*, 556), *have determined the right of the United States to these lands as against the Milwaukee Company.*

1. It would be enough to defeat the claim of the Milwaukee Company that NO GRANT is made in its favor. The granting act did not make one entire grant for one specific road, but as said by Judge Shiras in deciding this case in the Circuit Court:

"It was the intent of Congress to subserve two distinct purposes * * *. The *one* to secure the building of a line of railway from Sioux City to the Minnesota line, the other to secure the building of the line westwardly from McGregor. The act does not purpose to guarantee the number of acres intended to be appropriated to either object, nor does it make a *joint grant* of the lands for the common purpose of

securing the construction of both lines of railway as *parts of one system.* * * * If must be held to have been the intent of Congress to grant *certain lands* in aid of the line from Sioux City, and certain *other lands* in aid of the line from McGregor westward."

This purpose is shown by the fact that the granting act specifically *named* the McGregor Western Railroad Company as the beneficiary for the Milwaukee road, and as to the Sioux City road, left the State of Iowa free to make the road either by a railway company to be designated by the Legislature, or by such other plan as the State might adopt, even without any corporation.

There is no possible ground on which the Milwaukee Company can construe the granting act as giving these lands in any event to it.

2. *But any such clause is negatived by the partition decree and the Anderson Act of March* 3, 1887.

The Milwaukee road intersected the Sioux City road at Sheldon. There was an overlap in the granted and indemnity limits of the two roads. This Court held in the partition case (117 U. S., 406) that in the overlapping granted limits each took by the grant an *equal moiety,* but that outside of that limit priority of right to indemnity lands was determined by priority of selection.

Partition was accordingly made of the lands in the overlap, because the *title of each was distinct.* The partition decree settled the rights of the companies as *between them,* and gave to each lands in severalty.

The United States *might* have insisted upon the forfeiture of the undivided half of the Sioux City Company. But the United States has elected to accept the partition as determining the lands which each Company might lawfully claim. As between the Companies the

decree is a *res adjudicata*, accepted, ratified by the United States entitled to a decree of forfeiture of the lands aparted to the Sioux City Company.

In this condition of the title the Anderson Act of 1887 specifically required that—

"The Secretary of the Interior * * * is directed to immediately adjust in accordance with the *decision of the Supreme Court* each of the railroad land grants made by Congress."

This applies in this case.

And the act then makes it the duty of the Attorney-General in case lands have been erroneously patented in aid of a railroad,

"to commence and prosecute * * * the necessary proceedings to cancel all patents * * * heretofore issued for such lands and to restore the title thereof to the United States."

This includes the lands erroneously patented to the State of Iowa in aid of the Sioux City Company—the lands now in dispute.

Congress could have extended the time of the State of Iowa or of the Sioux City Company for the completion of its road. Congress could have regranted the lands in aid of another Company to complete the road. If it were not for the rights of settlers—secured by the Act of 1887—Congress could even now give these lands to a company to complete the Sioux City road.

There is nothing in the granting act of 1864 which estops Congress from so doing. Nothing in it gives the Milwaukee Company a right to object.

The Anderson Act instead of granting *these lands* for the completion of the Sioux City road, restores them to the *public domain*, and makes provision for settlers thereon.

Thus the partition decree and the Anderson Act alike deny the right of the Milwaukee Company to any of these lands.

IV. *The Milwaukee Company acquired no title to these lands by any legislative act, and none by indemnity selection.*

The opinion of Judge Shiras in the Circuit Court in this case (Record, 97) says the claim has been made on behalf of the Milwaukee Company that "the State of Iowa had by act of the General Assembly granted all of its interest, right and title in these lands to the Milwaukee Company." This doubtless refers to the Iowa Act approved February 27, 1878. (Record, 47.)

As to this it may be said, it *makes no such grant.*

1. In express terms, the grant is limited to those "lands and rights to lands whether in severalty or in common * * * embraced within the overlapping or conflicting limits of the two grants, or roads made and described by the act of Congress hereafter designated, *granted to the State of Iowa to aid in the construction of a railroad from * * * Main Street, South McGregor, in a westerly direction,*" etc.

This only applies to *such lands* as had been granted by the Act of 1864 to the State in *aid of the Milwaukee road.*

The *third* section then prescribes conditions on which *patents* shall issue for

"all the remaining lands belonging to or embraced in said grant *appertaining to their line of railroad,* including all or any part or *moiety* of the lands in each overlapping limits, *which by the terms of said act of Congress appertain to their line of road.*"

Here again is the limitation as in the granting act of 1864.

And if the State had attempted to *pervert its trust,*

its act would in a court of equity be treated as a nullity. Judge Shiras has properly said (Record, 97):

"The State had not the right or power to *change the purpose* for which the lands were donated, nor could it defeat the object of the grant by any contract it entered into with the railway company."

And in giving construction to the acts and contracts of the State they will not be construed as intended to violate or pervert the trust upon which it took lands, if it be possible to give any other construction.

Finally, on this part of the case the Milwaukee Company never made any selection of these lands as indemnity lands. No selection was made or approved by the Secretary of the Interior. And without this no right to indemnity lands could vest in the Company. It is well settled that the right of a Railroad Company attaches to *granted* lands by filing a map of definite location; the right to indemnity lands only by *selection*. (U. S. *vs.* M., K. & T. Ry. Co., 141 U. S., 358; R. R. Co. *vs.* Rice, 133 U. S., 496, 511; Barney *vs.* Winona, 117 U. S., 228.)

Until such selection settlers can lawfully make homesteads. (St. Paul R. R. *vs.* Winona R. R., 112 U. S., 731.)

In any view of the case it is respectfully submitted that there is *no ground* upon which the claim of the Milwaukee Company can be sustained.

FINALLY. The agreed statements of fact in case No. 149, made part of the facts in this case, show that numerous settlers have in good faith made homestead and pre-emption claims on a large part of these lands.

The claimants and the lands are shown in an exhibit of the cross-bill of the settlers. (Record, print 4, 19–22.)

They sought to enter them at the local land office at Des Moines. Their claims were denied—*not* for want of merit or legal right, but because the usage of the Land Department is not to finally allow such claims until after decree cancelling the illegal patents to the State.

Under the Act of March 3, 1887 (24 Stat., 556), the Attorney-General, in an opinion, November 17, 1887, to the Secretary of the Interior, held that the right to issue patents under the fourth section of said act does not arise until the land shall have been legally determined to belong to the United States. (Copp's Land Owner, December 15, 1887, vol. xiv, p. 214; 6 Int. Dept. Land Dec., 272, 276.)

The same has been held under the Act of April 21, 1876. (Wisconsin Central R. R. *vs.* Stinka, Secretary Lamar, January 25, 1886, 4 Land Dec., 344; Wisconsin Central R. R. case, June, 1888; Int. Dept. and Land Dec.. p. —. See 2 Op. Atty. Gen'l, 41; 5 Op., 7; Streeter *vs.* M., K. & T. Co., February 7, 1878, Schurz, Secretary Int., Rep. 1878, Part 1, p. 63.

The United States, even without the aid of a statute, can, and, to protect the rights of settlers, is under obligation by bill in equity to procure the cancellation of patents improperly issued. (U. S. *vs.* M.. K. & T. Co., 141 U. S., 358, 381.) And this duty is emphasized by the several acts of Congress protecting the rights of settlers.

The original bill in this case—the bill in care No. 149—was commenced under the Act of March 3, 1887. It provides in the strongest terms for the protection of settlers on this class of land. Their rights are secured to them by the homestead and pre-emption laws, by the decisions of the Land Department and the Courts. The settlers have lived upon the lands and made valuable

improvements thereon. Their rights all accrued long before the Milwaukee Company made any claim to the lands, all of which the Company well knew. The Company is now *estopped* from asserting any claim. Their rights have been discussed in my brief in the case No. 149, and to that I respectfully refer.

If by any possibility any part of the lands should be adjudged to the Sioux City Company—for none can be certainly to the Milwaukee Company—it is respectfully submitted that *none of the lands* occupied by the settlers should be taken from them, but the lands not so occupied should rather be taken.

This is said only *ex abundanti cautela*—and in the full confidence that all the lands have been forfeited to the United States.

WILLIAM LAWRENCE,
Of Counsel for the Homestead and Pre-emption Claimants

BELLEFONTAINE, OHIO, *April*, 1895.